# Hate Speech PIC

## Shell

#### Public Universities and colleges should establish restrictions on hate speech consistent with Byrne’s proposal. This includes restrictions on otherwise protected free speech. They will remove all other restrictions on protected free speech. Byrne 91

Byrne, J. Peter. [Associate Professor, Georgetown University Law Center.] "Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.

This article examines the constitutionality of university prohibitions of¶ public expression that insults members of the academic community by directing¶ hatred or contempt toward them on account of their race. I Several¶ thoughtful scholars have examined generally whether the government can¶ penalize citizens for racist slurs under the first amendment, but to the limited¶ extent that they have discussed university disciplinary codes they have assumed¶ that the state university is merely a government instrumentality subject¶ to the same constitutional limitations as, for example, the legislature or¶ the police. 2 In contrast, I argue that the university has a fundamentally dif ferent relationship to the speech of its members than does the state to the speech of its citizens. On campus, general rights of free speech should be qualified by the intellectual values of academic discourse. I conclude that the protection of these academic values, which themselves enjoy constitutional protection, permits state universities lawfully to bar racially abusive speech, even if the state legislature could not constitutionally prohibit such speech throughout society at large. At the same time, however, I assert that the first amendment renders state universities powerless to punish speakers for advocating any idea in a reasoned manner. It is necessary at the outset to choose a working definition of a racial insult. This definition, however, is necessarily provisional; any such definition implies the writer's views on the boundaries of constitutionally protected offensive speech, and the reader cannot be expected to swallow the definition until she has had the opportunity to inspect the writer's constitutional premises. Having offered such a caution, I define a racial insult as a verbal or symbolic expression by a member of one ethnic group that describes another ethnic group or an individual member of another group in terms conventionally derogatory, that offends members of the target group, and that a reasonable and unbiased observer, who understands the meaning of the words and the context of their use, would conclude was purposefully or recklessly abusive. Excluded from this definition are expressions that convey rational but offensive propositions that can be disputed by argument and evidence. An insult, so conceived, refers to a manner of speech that seeks to demean rather than to criticize, and to appeal to irrational fears and prejudices rather than to respect for others and informed judgment. 3

#### The counterplan establishes checks on reverse enforcement, chilling effect, and slippery slope.

Byrne, J. Peter. [Associate Professor, Georgetown University Law Center.] "Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.

Disciplinary rules are the least effective way that a university can enhance¶ the quality of speech or foster racial tolerance among its members. The educational¶ program must celebrate and instruct its students in the beauty and¶ usefulness of graceful and accurate speech and writing; a liberal education¶ should leave students intolerant of propaganda and commercial manipulation,¶ and competent to directly and forcefully express coherent views as citizens.¶ Such teaching is not amoral; the graduate ought freely to prefer the¶ exercise of skill, reflective perception, and an abiding curiosity to desires for acquisition, consumption, and domination. Without the university's consistent¶ action on a commitment to reasoned discourse as central to its mission,¶ the university's attempt to prohibit insulting or lewd speech may seem a hypocritical¶ denial of its own failings.¶ Similarly, prohibiting racial insults will advance racial harmony on a campus¶ only when the university has effectively committed itself to educate lovingly¶ the members of every ethnic group. Although nearly every university¶ admits minority students using criteria that aspire in good faith to be fair,¶ many have failed to transform themselves into truly multi-ethnic institutions.¶ Not to have succeeded at this daunting task does not merit reproach; the¶ university's origins and traditions are explicitly European, growth and accommodation¶ to the extent required to create a multi-ethnic community¶ must take time and witness false steps. However, not to have made plain¶ that blacks, hispanics, Asians, Indians, and others who have been excluded in¶ the past are not only now welcome, but are requested to collaborate in shaping¶ new university structures and mores so that the benefits of advanced education¶ will be available without regard to birth and so that the university can¶ continue to spawn for a changing society a cosmopolitan culture based on¶ reason and reflection standing above tribal fears and blind desires, not to¶ have begun this work in earnest merits regret and will provoke anger. Universities¶ that pass rules against racial insults which are not part of a comprehensive¶ commitment to ethnic integration will serve only to exacerbate racial¶ tensions.¶ Schools that adopt prohibitions on racially offensive speech ought to enforce¶ them with restraint. Certainly, when students have sought to intimidate¶ or frighten other students with racial insults, the school should treat this¶ behavior as a fundamental breach of university standards meriting the¶ strongest punitive measures. But often insulting expressions will result from¶ insensitivity or ignorance; complaints about such behavior should be seen as¶ opportunities for teaching, and creative informal measures that make the offenders¶ aware of the harmful consequences and injustice of their behavior¶ should be pursued. The school should also provide succor to the victim¶ whose hurt and anger must be acknowledged and meliorated. But severely¶ punishing ignorant young people for expressions inherited from their parents¶ or neighborhoods may serve to harden. and focus their sense of grievance,¶ create martyrs, and prolong racial animosity. Deans who administer such¶ rules must overcome their personal repugnance at racist speech and enforce¶ the rules for the benefit of the entire community. Controversial interpretative¶ application of the rules should be placed in the hands of faculty and¶ students representative of the entire institution, and the accused, the victim,¶ and the dean should have an opportunity to express their perspectives.¶ A recurrent concern regarding rules against racial insults is their vague-ness and overbreadth. These, of course, were the bases upon which the University¶ of Michigan's policy was declared unconstitutional, although the¶ demonstrated propensity of the school to apply the policy to presumptively¶ protected speech appears to have steered the Court's conclusions on these¶ issues.17 6 In general, university disciplinary rules rarely are struck down for¶ vagueness; courts usually permit universities to regulate student conduct on¶ the basis of generally stated norms, so long as they give fair notice of the¶ behavior proscribed. 177 Courts generally are more strict regarding vagueness¶ in rules that affect speech, in no small part because of the distrust of the¶ competence and motives of the government censor.178¶ A central argument of this article has been that the university can be¶ trusted to administer rules prohibiting racial insults because it has the proper¶ moral basis and adequate expertise to do so. It is not surprising, therefore,¶ that I believe that vagueness concerns about such university rules are largely¶ misplaced. This is not to deny that a university should adopt safeguards to¶ protect accused students from the concerns that the courts have highlighted.¶ First, the rules should state explicitly that no one may be disciplined for the¶ good faith statement of any proposition susceptible to reasoned response, no¶ matter how offensive. The possibility that punishment is precluded by this¶ limitation should be addressed at every stage of the disciplinary process. Second,¶ some response between punishment and acquittal should be available¶ when the university concludes that the speaker was subjectively unaware of¶ the offensive character of his speech; these cases seem to present mainly educational¶ concerns. Third, all controversial issues of interpretation of the¶ rules should be entrusted to a panel of faculty and students who are representative¶ of the institution. Rules furthering primarily academic concerns about¶ the quality of speech and the development of students should be given meaning¶ by those most directly concerned with the academic enterprise rather¶ than by administrators who may register more precisely external political¶ pressures on the university. Given these safeguards and a comprehensible¶ definition of an unacceptable insult, such as the one ventured in the introduction¶ to this article,179 a court which accepts the underlying proposition that a¶ university has the constitutional authority to regulate racial insults should¶ not be troubled independently by vagueness.¶ A difficult prudential consideration is whether a university should decline¶ to regulate insults because of public criticism that censorship demeans the very intellectual virtues towards which the university strives, such as the superiority¶ of persuasion over compulsion. Obviously, the adoption of such¶ regulation has brought forth sincere and bitter criticism from many friends of¶ higher education-the Economist, for example, went so far as to call such¶ regulations "disgraceful."'' 80 To some extent these criticisms stem from misunderstanding¶ about the character of academic speech and the goals of¶ prohibitions on racial insult, but universities should admit that turning to¶ regulation marks a sad failure in civility. A failure already has occurred,¶ however, when students scurrilously demean other students because of their¶ race. The university at this point can only choose among evils. It would not¶ be true to its traditions if it did not come down on the side of protecting the¶ educational environment for blameless students against wanton and hurtful¶ ranting.

#### Multiple examples prove that hate speech constructs a white social space that makes counter speech ineffective and exposes students to more violence. Moore and Bell 17

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

Just a small sampling of racist incidents on college and university campuses throughout ￼the post–civil rights era reveals the nature of this persistent form of racism. For example, in September of 2016 a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Jaschik 2016). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a “Compton Cookout,” which they claimed was in “celebration” of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in “ghetto” fashion and indicating that chicken, watermelon and malt liquor would be served. In response to this provocation, black students organized a protest, criticizing this racist depiction of blackness and black culture. The protest sparked an outburst of racist activity at UCSD, including a campus television broadcast in which white students called the black student protestors “ungrateful niggers,” the hanging of a noose from a bookcase in the main library, and the placement of a white pillowcase in Ku Klux Klan (KKK) style over a campus statue (Archibold 2010; Gordon 2010). In 2007 at Hamline University, six white student-athletes dressed for Halloween in what they called “mock African tribal outfits,” donning blackface, black Lycra suits, and Afro wigs. On the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Hoffstrom 2008).2 In the spring of 2002, a white student at Harvard Law School used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term “nigs” to refer to African Americans. After a protest in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year black woman law student that said, among other things, “We at the Harvard Law School, [are] a free, private community, ￼where any member wishing to use the word ‘nigger’ in any form should not be prevented from doing so.”3 In April 2000 at the University of Iowa College of Dentistry, faculty members received an e-mail message demanding that the school dismiss its minority students within three days, and after that three-day period had passed, students of color in the college received threatening racist e-mails (Leonard 2000). In February 1995 at UC Berkeley’s renowned School of Law, 14 students of color received letters in their mailboxes calling them “niggers,” “wetbacks,” and “chinks” and suggesting that Boalt was “for whites only” (Koury and Koh 1995). In the fall of 1986 at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a black freshman, yelling racial epithets and burning a paper cross (UPI 1986).¶ These examples are illustrative of incidents that have taken place at all types of histori¶ lly white colleges and universities across the nation, beginning after the legal changes of the civil rights era through which people of color gained entry to these institutions. In 1990 the National Institute Against Prejudice and Violence reported that incidents of “hate speech” on college campuses and universities could be calculated at between 800,000 to 1 million per year (Matsuda et al. 1993).4 Indeed, a 1994 report conducted by the University of Houston Institute for Higher Education Law and Governance noted that US colleges and universities are characterized by a “climate of bigotry” (Agguire 1994). Yet when instances like those discussed above occur, individuals in the media and in the academy often seem surprised, and the discourse around these incidents frames them as “recent trends” or “increasing hostilities”—as something new and/or unique (see Matsuda et al. 1993). The reality, however, is that racist expressions and activities on historically white college and university campuses have been consistent and relatively regular occurrences throughout the post–civil rights era. ￼The persistence of these forms of overt and hostile racism in national institutions, which are meant to be gateways to upward mobility, betrays a contradiction in the broader contemporary popular discourse that racism is a thing of the past that disappeared following the legal changes brought about during the era of the civil rights movement. It is perhaps this contradiction that leads scholars and pundits to frame such incidents as newly emergent, isolated, or surprising. Moreover, incidents of blatant racism on college and university campuses seem to contradict contemporary sociological analyses of the racial dynamics of the post–civil rights era. Contemporary race scholars suggest that while racist structures and hierarchies persist, racist expression typically takes place in a less overt, more subtle manner—what Eduardo Bonilla- Silva (2010) has termed “color-blind racism” (see also Coates 2011; Bobo, Kluegel, and Smith 1997; Carr 1997). Rather than expressing overt hostility, color-blind racist narratives assert a decontextualized commitment to racial equality while simultaneously ignoring or justifying— and thereby reifying—historical and structural racial inequality (Bonilla-Silva 2010; Bell and Hartmann 2007). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets, which profess rhetorical commitment to equality of opportunity and, at the same time, minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality. Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post–civil rights era (e.g.,; Moore 2008; Gallagher 2003; Lewis 2003; Parks-Yancy and Post 2003; Carr 1997; DiTamaso, Feagin, Vera, and Imani 1997). While the concept of color-blind racism provides invaluable theoretical insight into the persistence of racial inequality in the post–civil rights era and its continued manifestations in US institutions, ￼the current scholarship fails to explain adequately the persistence of explicit hostile racist incidents on college and university campuses like the ones described above.¶ Placing these incidents within the broader context of a racialized social structure, which is characterized by a dominant discourse based on color-blind racism, this research reveals an important connection between these overt and blatant racist expressions and the more tacit and covert racial tenets of color-blind racism. In fact, we suggest that the two forms of racial expression—explicit overt racist expression and covert color-blind racist discourse—work in connection with one another to mark and reinscribe colleges and universities as white institutional spaces. Specifically, we suggest that the explicit nature of incidents of racist expression gives rise to two important discursive frames that together tend to reinforce institutional and structural racial inequities. On the one hand, explicitly racist incidents on college and university campuses create a discursive platform for liberal college communities to publicly reject racism while tacitly delimiting the definition of racism to only explicit expressions of racial hostility. In other words, these racist incidents provide an opportunity for institutional actors to reaffirm a commitment to color-blind principles of equality in their institutions. On the other hand, these incidents create a platform for the color-blind, abstract liberalist construction of freedom of speech advocated by organized free speech absolutists and codified by US courts. More specifically, racist incidents on college and university campuses give rise to a discourse that actively defends the right to racist expression. The discursive frames that arise in conjunction with racist expressions on college and university campuses serve as a mechanism of substantive racial exclusion, functioning to reproduce the white institutional space that characterizes historically white colleges and universities in the United States.

#### Hate speech codes are effective they create legal recognition which is key to challenge a culture of racism.

Michel Rosenfeld\* [Justice Sydney L. Robins Professor of Human Rights, Benjamin N. Cardozo School¶ of Law.] 24 Cardozo L. Rev. 1523 2002-2003

-Article surveyed hate speech laws across US, UK, Canada, Germany

The principal disadvantages to the approach to hate speech¶ under consideration, on the other hand, are: that it inevitably has¶ to confront difficult line drawing problems, such as that between¶ fact and opinion in the context of the German scheme of¶ regulation; that when prosecution of perpetrators of hate speech¶ fails, such as in the British Southern News case discussed above,'30¶ regulation may unwittingly do more to legitimate and to¶ disseminate the hate propaganda at issue than a complete absence¶ of regulation would have;' that prosecutions may be too selective¶ or too indiscriminate owing to (often unconscious) biases¶ prevalent among law enforcement officials, as appears to have¶ been the case in the prosecutions of certain black activists under¶ the British Race Relations Act;'32 and, that since not all that may¶ appear to be hate speech actually is hate speech-such as the¶ documentary report involved in Jersild33 or a play in which a racist¶ character engages in hate speech, but the dramatist intends to¶ convey an anti-hate message-regulation of that speech may¶ unwisely bestow powers of censorship over legitimate political,¶ literary and artistic expression to government officials and judges.¶ In the last analysis, none of the existing approaches to hate¶ speech are ideal, but on balance the American seems less¶ satisfactory than its alternatives. Above all, the American¶ approach seems significantly flawed in some of its assumptions, in¶ its impact and in the message it conveys concerning the evils¶ surrounding hate speech. In terms of assumptions, the American¶ approach either underestimates the potential for harm of hate¶ speech that is short of incitement to violence, or it overestimates¶ the potential of rational deliberation as a means to neutralize calls¶ to hate. In terms of impact, given its long history of racial¶ tensions, it is surprising that the United States does not exhibit¶ greater concern for the injuries to security, dignity, autonomy and¶ well being which officially tolerated hate speech causes to its black¶ minority. Likewise, America's hate speech approach seems to¶ unduly discount the pernicious impact that racist hate speech may have on lingering or dormant racist sentiments still harbored by a¶ non-negligible segment of the white population.'34 Furthermore,¶ even if we discount the domestic impact of hate speech, given the¶ worldwide spread of locally produced hate speech, such as in the¶ case of American manufactured Neo-Nazi propaganda¶ disseminated through the worldwide web, a strong argument can¶ be made that American courts should factor in the obvious and¶ serious foreign impact of certain domestic hate speech in¶ determining whether such speech should be entitled to¶ constitutional protection. Finally, in terms of the message¶ conveyed by refusing to curb most hate speech, the American¶ approach looms as a double-edged sword. On the one hand,¶ tolerance of hate speech in a country in which democracy has been¶ solidly entrenched since independence over two hundred years ago¶ conveys a message of confidence against both the message and the¶ prospects of those who endeavor to spread hate.'35 On the other¶ hand, tolerance of hate speech in a country with serious and¶ enduring race relations problems may reinforce racism and¶ hamper full integration of the victims of racism within the broader¶ community.'36¶ The argument in favor of opting for greater regulation of hate¶ speech than that provided in the United States rests on several¶ important considerations, some related to the place and function¶ of free speech in contemporary constitutional democracies, and¶ others to the dangers and problems surrounding hate speech.¶ Typically, contemporary constitutional democracies are¶ increasingly diverse, multiracial, multicultural, multireligious and¶ multilingual. Because of this and because of increased migration,¶ a commitment to pluralism and to respect of diversity seem¶ inextricably linked to vindication of the most fundamental¶ individual and collective rights. Increased diversity is prone to¶ making social cohesion more precarious, thus, if anything,¶ exacerbating the potential evils of hate speech. Contemporary¶ democratic states, on the other hand, are less prone to curtailing free speech rights than their predecessors either because of deeper¶ implantation of the democratic ethos or because respect of¶ supranational norms has become inextricably linked to continued¶ membership in supranational alliances that further vital national¶ interests.¶ In these circumstances, contemporary democracies are more¶ likely to find themselves in a situation like stage four in the context¶ of the American experience with free speech rather than in one¶ that more closely approximates a stage one experience.'37 In other¶ words, to drown out minority discourse seems a much greater¶ threat than government prompted censorship in contemporary¶ constitutional democracies that are pluralistic. Actually, viewed¶ more closely, contemporary pluralistic democracies tend to be in a¶ situation that combines the main features of stage two and stage¶ four. Thus, the main threats to full fledged freedom of expression¶ would seem to come primarily from the "tyranny of the majority"¶ as reflected both within the government and without, and from the¶ dominance of majority discourses at the expense of minority ones.¶ If it is true that majority conformity and the dominance of its¶ discourse pose the greatest threat to uninhibited self-expression¶ and unconstrained political debate in a contemporary pluralist¶ polity, then significant regulation of hate speech seems justified.¶ This is not only because hate speech obviously inhibits the selfexpression¶ and oopportunity of inclusion of its victims, but also,¶ less obviously, because hate speech tends to bear closer links to¶ majority views than might initially appear. Indeed, in a¶ multicultural society, while crude insults uttered by a member of¶ the majority directed against a minority may be unequivocally¶ rejected by almost all other members of the majority culture, the¶ concerns that led to the hate message may be widely shared by the¶ majority culture who regard of other cultures as threats to their¶ way of life. In those circumstances, hate speech might best be¶ characterized as a pathological extension of majority feelings or¶ beliefs.¶ So long as the pluralist contemporary state is committed to¶ maintaining diversity, it cannot simply embrace a value neutral¶ mindset, and consequently it cannot legitimately avoid engaging in¶ some minimum of viewpoint discrimination. This is made clear by¶ the German example, and although the German experience has¶ been unique, it is hard to imagine that any pluralist constitutional¶ democracy would not be committed to a similar position, albeit to¶ a lesser degree.'38 Accordingly, without adopting German free speech jurisprudence, at a minimum contemporary pluralist¶ democracy ought to institutionalize viewpoint discrimination¶ against the crudest and most offensive expressions of racism,¶ religious bigotry and virulent bias on the basis of ethnic or national¶ origin

#### And hate speech primes society for genocide – multiple empirical examples prove. Tsesis 09

Tsesis, Alexander [Loyola University Chicago School of Law]. "Dignity and speech: The regulation of hate speech in a democracy." (2009).

Permitting persons or organizations to spread ideology touting a¶ system of discriminatory laws or enlisting vigilante group violence¶ erodes democracy. So it was in the Weimar Republic, where the¶ repeated anti-Semitic propaganda of vulgar ideologues like Julius¶ Streicher, who published perverse attacks against Jews in Der¶ Stiirmer, chipped away at the post-World War I German democratic¶ experiment.6¶ ' Avowedly influenced by nineteenth century antiSemitism,¶ his weekly stories of Jewish ritual murder and sexual¶ exploitation were a crude way of antagonizing the victims and¶ gaining support for widespread prejudice against Jews." It is truly¶ eerie, now, looking at photographs relating the effectiveness of Nazi¶ propaganda: respectable looking adults in suits and dresses¶ listening to long lectures on Jewish inferiority; children, barely able¶ to stand on their two feet, raising their right arm in a Nazi salute.¶ Nazi propaganda incorporated numerous well-known¶ nineteenth century slogans. To take one example, Streicher, who¶ was later sentenced to death by the Nuremberg War Crimes¶ Tribunal, 64 used an inflammatory slogan, "The Jews are our misfortune!" on his newspaper masthead.& At one point over¶ 130,000 copies of his publication were sold and displayed on public¶ message boards throughout the country.66 The phrase also became¶ prominently featured on posters throughout the Third Reich.67¶ This slogan was taken verbatim from an 1879 article by¶ Professor Heinrich von Treitschke, arguably the greatest German¶ historian of the nineteenth century.68 Its visibility in pre-World War¶ II German society helped legitimize anti-Semitism there in¶ intellectual circles.69¶ A gradual process of incitement also occurred elsewhere. In¶ many American colonies, authors and legal institutions had been¶ degrading blacks since the seventeenth century.70 By national¶ independence, in 1776, the colonies of South Carolina and Georgia¶ had long-standing commitments to retaining slavery despite the oftrepeated¶ mantra of universal natural rights. In 1787, those two states refused to endorse the proposed Constitution without¶ provisions protecting that undemocratic institution."72¶ Senator John Calhoun, Congressman Henry Wise, and other¶ powerful racist orators misled the public about the supposedly¶ benevolent slave owner, feeding his slaves and treating them like¶ his own children. 3 The repeated inculcation of supremacism proved¶ effective in misrepresenting blacks as moveable property.¶ Abolitionists like Theodore Weld, Angelina and Sarah Grimk6,¶ Frederick Douglass, and William Lloyd Garrison were unable to win¶ over the country to their abolitionist views.74 To the contrary,¶ proslavery thought monopolized the Southern marketplace of¶ ideas.' Slavery came to an end after a bloody Civil War, not¶ through articulate or even heated debate.6¶ Because intimidating hate speech has so often inflamed¶ dangerous attitudes, the value of such expression should be¶ balanced against the likelihood that it will cause harm. The risks¶ are greater when hate propaganda incorporates symbolism, like¶ swastikas, that demagogues have historically displayed to rally¶ supporters to action. Robert Post is undoubtedly correct that speech¶ is valuable because it provides a breeding ground for "collective selfdetermination."7¶ 7 The more difficult question is how self-expression¶ should be treated when it conflicts with the safety of its target.¶ As much as self-expression is fundamental to democratic¶ institutions, it can, nevertheless, be balanced against the social¶ interest in safeguarding a pluralistic culture by preventing the¶ instigation of demagogic threats. Placing no limits on speech-not¶ even on expressions blatantly intended to make life miserable for¶ minorities-preserves the rights of speakers at the expense of¶ targeted groups. Defamation statutes, zoning regulations, and¶ obscenity laws indicate that the freedom of speech is not shielded¶ where it undermines other individuals' legitimate interests. 7 Hate speech regulation undoubtedly inhibits some opportunities for selfexpression;¶ more importantly, it prevents instigative communication¶ from undermining its targets' ability to live unaccosted by¶ harassment.¶ In the many historic examples when destructive messages¶ proved to be effective in instigating violence, they caused enormous¶ social turmoil. Just like shouting "fire" in a crowded movie theater,¶ which can be prohibited without violating the First Amendment,79¶ hate speech can cause a stampede. Take Spain, for instance, which¶ expelled its Jewish population in 1492.80 The expulsion came after¶ years of Inquisition propaganda and hurt both the exiled Jews and¶ the remaining Spanish population. 1 Teachings by zealous¶ preachers like Vincent Ferrer, a later-canonized Dominican monk,¶ in the late fifteenth century brought on a nationwide anti-Jewish¶ hysteria that opposed the free practice of Judaism while decrying¶ overt violence.82 Pursuant to his instigation, a Castilian decree¶ discriminated against Jews in employment, dress, and criminal¶ punishments.83 Historian Heinrich Graetz explained the connection¶ between anti-Jewish preaching and draconian edicts: the populace¶ was "inflamed by the passionate eloquence of the preacher [and]¶ emphasized his teaching by violent assaults on the Jews." 4 Another¶ historian explained that:¶ For centuries, Christians had been encouraged to hate the¶ Jews. With preachers telling them, Sunday after Sunday, that¶ Jews were perverted and guilty of complicity in the death of¶ Christ, the faithful ended up by detesting them with a hatred 815 that was bound one day to express itself in violence .¶ Once unleashed, the expulsion of Jews from Spain followed¶ naturally from the verbal spread of hatred during the Inquisition.8 6¶ The economic consequences were grave. Many commercial enterprises in Seville and Barcelona, for instance, were ruined .¶ "Spain lost an incalculable treasure by the exodus of Jewish...¶ merchants, craftsmen, scholars, physicians, and scientists," wrote¶ the encyclopedic Will Durant, "and the nations that received them¶ benefitted economically and intellectually."88 Anti-Jewish preaching¶ in parts of Spain influenced a wide social segment of the population,¶ and the result was devastating both for the Jews who fled and for¶ the country that renounced them on dogmatic grounds. Elsewhere¶ in the ancient world, as historian Ben Kiernan has compellingly¶ documented, periodic mass massacres perpetrated against segments¶ of the native populations in Ireland, North and South America, and¶ Australia were likewise influenced by widely disseminated¶ dehumanizing statements. 9¶ The spread of ethnic and racial hatred continues to elicit¶ violence throughout the modern world. The dissemination of¶ ethnically incitable messages has precipitated tribal clashes in¶ Kenya.90 In Rwanda, ethnic stereotyping and repeated media calls¶ for the extermination of Tutsi led to a massive genocide perpetrated¶ against that group.9¶ '¶ Arab racial hate propaganda in the Sudan has catalyzed a¶ government-sponsored attempt to "cleanse" black Africans in¶ Darfur, Sudan." Likewise, in the Democratic Republic of the Congo¶ the government has relied on the incitement of ethnic hatred,¶ creating a culture where ethnic murder is a routine militia¶ practice. In the Arab world, terror organizations like Hamas and¶ Hizballah spread hatred against Jews without any interference from several governments, including Egypt, Syria, Lebanon, and Saudi¶ Arabia. 94 School texts that are "written and produced by Saudi¶ government" teach children to kill Jews and to hate Christians and¶ Jews.95¶ Hate propaganda in these countries is far more virulent than it¶ is in the United States; nevertheless, a democracy committed to the¶ protection of individual rights does not run afoul of free speech¶ principles by criminalizing group incitement that has so globally¶ proven to influence harmful social movements.¶ A First Amendment theory, as the Supreme Court made clear in¶ Virginia v. Black, must examine whether there are historical¶ reasons to believe that offensive expression against an identifiable¶ group is likely to intimidate reasonable audiences. Robert Post's¶ argument about the undemocratic nature of hate speech regulation¶ regards "the function of public discourse" to be the reconciliation of¶ "the will of individuals with the general will. Public discourse is¶ thus ultimately grounded upon a respect for individuals seen as 'free¶ and equal persons."'97 He emphasizes democracy's central obligation¶ to protect private "autonomous wills."9" His insightful¶ characterization, however, captures only part of the raison d'etre of¶ democracy; on a more community-oriented level, that system of¶ governance serves to protect the overall well-being of the polity¶ against the wanton call for discriminatory conduct or violence. And¶ Black explicitly sanctions states' use of historical records to identify¶ symbolism that is likely to terrorize the populace and, therefore,¶ detract from the common good.99 This development in First¶ Amendment jurisprudence indicates that there is more to democracy¶ than self-determination.¶ Post's most recent statement on hate speech does not address¶ Black, even though the chapter was written after the Court¶ rendered its decision. 100 He connects the expression of hate to¶ "'extreme' intolerance and 'extreme' dislike."' °¶ ' This description,¶ while correct, does not account for the connection between hate¶ speech and extreme conduct. While the Constitution does not¶ authorize laws against negative emotions, speech that is¶ substantially likely to cause discriminatory harm, especially violence, can be regulated without infringing on the fundamental¶ principles of democracy.

## Impacts

### I – Geneirc

#### Hate speech kills the market place of ideas, fosters self-hatred and primes society for real violence. Johnsons 2000

Catherine B. Johnson [JD Candidate Fordham Law School] “STOPPING HATE WITHOUT STIFLING SPEECH: RE-EXAMINING THE MERITS OF HATE SPEECH CODES ON UNIVERSITY CAMPUSES” August, 2000 27 Fordham Urb. L.J. 1821

The ubiquity and incessancy of harmful racial depiction are thus the source of its virulence. Like water dripping on sandstone, it is a pervasive harm which only the most hardy can resist. Yet the prevailing first amendment paradigm predisposes us to treat racist speech as an individual harm, as though we only had to evaluate the effect of a single drop of water. This approach ... systematically misperceives the experience of racism for both victim and perpetrator. 157¶ ¶ Mari Matsuda, a professor at the School of Law and at the Center for Asian American Studies at UCLA, was one of the first to look at the hate speech issue from the point of view that it actually harms its victims. She is often accredited for bringing an "outsider jurisprudence" to the forefront of this debate. 158 Matsuda explains that victims of hate speech suffer irreparable harm, both psychologically and physically. 159 Victims of racist speech internalize the feelings of inferior self-worth and self-hatred. This in turn affects their relationships with others, their job performance, educational endeavors, and ultimately their ability to effectively communicate. 160 [\*1845] The harm of hate speech, as proponents of codes contend, is real.¶ a. Assaultive Speech Lands a BlisteringBlow¶ ¶ Those in favor of hate speech regulations argue that the harm of such speech is the equivalent of a punch - an actual assault on one's sense of person, essentially having the same effect as physical violence. 161 Like violence, words may land a sharp and insidious blow to those at whom they are hurled: "The experience of being called a 'nigger,' 'spic,' 'Jap,' or 'kike' is like receiving a slap in the face." 162 Regulating such speech is a "pragmatic response to the urgent needs of students of color and other victims of hate speech who are daily silenced, intimidated, and subjected to severe psychological and physical trauma by racist assailants who employ words and symbols as part of an arsenal of weapons of oppression and subordination." 163¶ As if repeated blows to one's psychological well-being by language of this sort is not enough, the victim is then further injured by the "government response of tolerance." 164 The blows of the racists, the homophobes or the sexists is then compounded by a final shot from the government or the university that stands idly by and accepts the intolerant messages. 165¶ Those involved in the outsider jurisprudence movement contend that a message of hate "inflicts wounds" 166 that do not just injure the intended victim but rather "hit the gut of [all] those in the target group." 167 This message - you are different, you are inferior, you do not belong, you will never amount to anything - is then [\*1846] "conveyed on the street, in school yards, in popular culture, and in the propaganda of hate widely distributed in this country." 168¶ b. Tolerance of Hate Speech Perpetuates a Social Reality ofSubordination¶ ¶ Those who call for regulation of hate speech further contend that in allowing such messages to be conveyed and spread, the government is arguably constructing and even perpetuating a damaging social reality about the affected groups "so that members of that group are always one down." 169 All members are harmed, because "at some level, no matter how much both victims and well-meaning dominant-group members resist it, racial inferiority is planted in our minds as an idea that may hold some truth." 170¶ This dominant social reality harms victims of hate speech in two ways: (1) externally, in society's perception of such groups; and (2) internally, in the victim's own perception of himself. The former is known as the "those people" effect - when one repeatedly hears that "those people are lazy, dirty, sexualized, money-grubbing, dishonest, inscrutable ... we reject the idea, but the next time we sit next to one of 'those people' the dirt message, the sex message, is triggered." 171¶ By "permitting one social group to speak disrespectfully of another habituates and encourages speakers to continue speaking that way in the future," 172 thereby making laws regulating such speech imperative to ensure that such groups may no longer find themselves "one down." 173 As this way of speaking becomes "normalized" by society, it then becomes "inscribed in hundreds of plots, narratives, and scripts; it becomes part of culture, what everyone knows." 174¶ Not only do such messages cause external or reputational harm to the group as perceived by society, such ideas often become an internal reality for victims. Repeated messages of this sort eventually [\*1847] cause victims to believe that perhaps they do not deserve to be treated as everyone else. 175 "Through an unfortunate psychological mechanism, incessant bombardment by images of [this] sort ... inscribe those negative images on the souls and minds of minority persons. Minorities internalize the stories they read, see and hear every day." 176¶ The effect of such internalization silences victims, ingraining them with the notion that their voice is not valuable or credible in society's discourse. 177 "Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intellectual inadequacy, laziness, lasciviousness, and demanding resources beyond his or her adequate share?" 178 The result of such silencing is that victims of hate speech have no effective voice in the marketplace of ideas, 179 leaving them little opportunity to counter-attack the assaultive speech. 180¶ c. Hate Speech Denies Equal EducationalOpportunity¶ ¶ ¶ Our educational institutions [are] idealized as a refuge for the calm, impartial, and unimpeded pursuit of knowledge and truth. Here we hope to escape the bigotry, cruelty and injustice outside. But universities and colleges are no longer, if they ever were, tranquil havens in a prejudiced world. Instead, for people of color, women, gays and lesbians, religious minorities, and members of other arbitrarily disadvantaged groups, institutions of higher education have become, increasingly, places of physical and psychological danger. 181

### I - Delgado

#### Hate speech degrades minorities, locking in the squo and ensuring their failure. Delgado 2k

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. “TOWARD A LEGAL REALIST VIEW OF THE FIRST AMENDMENT.” Harvard Law Review. January 2000. JJN

B. Hate Speech as a Concerted Harm Another realist observation concerns what some call the “social construction of reality” thesis. [FN39] Hate speech never occurs in isolation; it picks as its target individuals who have been exposed to racist hate speech before and are likely to experience its sting again in the future. \*788 Like salt rubbed into a wound, hate speech digs at its victims' sensibilities, reminding them that they are different and that the source of that difference causes others to regard them as beneath the speaker in standing and human worth. [FN40] Like water dripping on stone, hate speech harms by virtue of its incessancy--victims hear it again and again throughout their entire lives. [FN41] The messages conveyed in hate speech sink in, so that over time the victims of those damaging messages begin to doubt their self-worth. This aspect of hate speech is what proponents of regulation have in mind when they write that hate speech contributes to a social order that falls far short of our national ideals. [FN42] But these messages also alter the environment for individuals of the majority race, including those who aspire to be nonracist and would never utter hate speech themselves. They hear others doing so and see images of minorities in demeaning or limited roles on television, in the movies, and in newspapers. [FN43] Who would blame them if, after time, they began secretly to wonder whether the prevailing stereotypes of persons of color did not have a small grain of truth to them? And, an insidious form of reinforcement known as “stereotype threat” validates those suspicions, as test-takers from groups subject to demeaning stereotypes perform poorly precisely because they fear that their performance will confirm the stereotype. [FN44] Claude Steele and a co-investigator coined this term when they found that black test-takers who were told that a fairly difficult paper-and-pencil test would measure their cognitive ability performed poorly compared to a control \*789 group whose members were told that the test was aimed only at helping researchers to understand problem-solving behavior. [FN45] Media and other messages broadcasting the inferiority of minorities may be a prime means of perpetuating stereotype threat. These broader consequences of hate speech can easily escape scholars. Seeing the harm of hate speech as affecting dignity only, they end up weighing short-term, individual consequences--wounded feelings--against the broad, systemic benefits that we derive as a society from our system of free expression. [FN46] Even Shiffrin succumbs to this temptation at times, yet how fair is it to frame the problem in these terms? Suppose that a supporter of hate speech regulation urged that the legal system weigh the speaker's “momentary discomfort” in reining in his or her thoughts against the massive gains that society reaps from enforcing antidiscrimination norms. A realist approach would regard both individual and social costs and benefits as duly weighing in the balance. It would deal with both the effects of hate speech on the life of a single individual as well as its impact across large groups.

### I – VTL

#### Racism destroys self-worth and dignity of those attacked. Post ‘91

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C. Harm to Individuals A third prominent theme in the contemporary literature is that racist expression harms individuals. This theme essentially analogizes racist expression to forms of communication that are regulated by the dignitary torts of defamation, invasion of privacy, and intentional infliction of emotional distress. The law compensates persons for dignitary and emotional injuries caused by such communication, and it is argued that racist expression ought to be subject to regulation because it causes similar injuries. These injuries include "feelings of humiliation, isolation, and self-hatred,"'3 2 as well as "dignitary affront."33 The injuries are particularly powerful because "racial insults . ..conjure up the entire history of racial discrimination in this country." In Patricia Williams' striking phrase, racist expression is a form of "spirit-murder." 35 Regulating racist expression because of its negative impact on particular persons would suggest that the class of communications subject to legal sanction be narrowed to those that are addressed to specific individuals or that in some other way can be demonstrated to have adversely affected specific individuals. The nature of that class would vary, however, depending upon the particular kind of harm sought to be redressed. If the focus is on preventing "dignitary harm,' 36 the injury might be understood to inhere in the very utterance of certain kinds of racist communications; 37 if the focus is instead on emotional damage, independent proof of distress might be required to sustain recovery.38 Regulation will also vary depending upon whether harm to individuals is understood to flow from the ideational content of racist expression, or instead from its abusive nature.3 9

### I – Marketplace of Ideas

#### Racism harms the marketplace of ideas – turns the AC. Post ‘91

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D. Harm to the Marketplace of Ideas A fourth theme in the current debate is that racist expression harms the very marketplace of ideas that the first amendment is designed to foster. A variety of different arguments have been brought forward to support this position. It is argued that racist expression ought to be "proscribed . ..as a form of assault, as conduct" inconsistent with the conditions of respect and noncoercion prerequisite to rational deliberation. 40 It is argued that racist expression is inconsistent with rational deliberation because it "infects, skews, and disables the operation of the market .... Racism is irrational and often unconscious."'41 Finally, it is argued that racism "systematically" silences "whole segments of the population,' 42 either through the "visceral" shock and "preemptive effect on further speech" of racist words,43 or through the distortion of "the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites.."44 The class of communications subject to legal sanction would depend upon which of these various arguments is accepted. Depending upon exactly how racist expression is understood to damage the marketplace of ideas, the class might be confined to communication experienced as coercive and shocking, or it might be expanded to include communication perceived as unconsciously and irrationally racist, or it might be expanded still further to encompass speech explicitly devaluing and stigmatizing victim groups.

### I – Deontology

#### Racism is rejected by deontic ideals. Post ‘91

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A. The Intrinsic Harm of Racist Speech A recurring theme in the contemporary literature is that racist expression ought to be regulated because it creates what has been termed "deontic" harm.18 The basic point is that there is an "elemental wrongness"' 9 to racist expression, regardless of the presence or absence of particular empirical consequences such as "grievous, severe psychological injury. ' 20 It is argued that toleration for racist expression is inconsistent with respect for "the principle of equality" 2 ' that is at the heart of the fourteenth amendment. 22 The thrust of this argument is that a society committed to ideals of social and political equality cannot remain passive: it must issue unequivocal expressions of solidarity with vulnerable minority groups and make positive statements affirming its commitment to those ideals. Laws prohibiting racist speech must be regarded as important components of such expressions and statements.3 If the basic harm of racist expression lies in its intrinsic and symbolic incompatibility with egalitarian ideals, then the distinct class of communications subject to legal regulation will be defined by reference to those ideals. If the fourteenth amendment is thought to enshrine an antidiscrimination principle, then "any speech (in its widest sense) which supports racial prejudice or discrimination" 24 ought to be subject to regulation. If the relevant ideals are thought to embody substantive racial equality, then the relevant class of communications should be defined as speech containing a "message . ..of racial inferiority."25

### I – Education

#### Racism interferes with and harms education. Post ‘91

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E. Harm to Educational Environment Each of the four categories of harm so far discussed can be caused by racist expression within public discourse. There is, however, yet a fifth kind of harm which is quite important to the contemporary controversy, but which is relevant only to the specific educational environment of institutions of higher learning. This is the harm that racist expression is understood to cause to the educational mission of universities or colleges. The prevention of this harm is central to the definition of a great number of campus regulations. Universities and colleges characteristically seek to regulate racist communications that "directly create a substantial and immediate interference with the educational processes of the University," without articulating exactly how racist expression can cause that interference. 45 Some campus regulations are more specific, focusing on the damage that racist expression is understood to cause to particular individuals or groups. For example, some regulations only proscribe racist expression that "will interfere with the victim's ability to pursue effectively his or her education or otherwise to participate fully in University programs and activities.."46 Presumably this interference will occur for reasons similar to those that we have already canvassed. In a number of instances, however, college or university regulations enunciate special educational goals that are understood to be inherently incompatible with racist expression. For example, Mount Holyoke seeks to inculcate the value of diversity, which it views as plainly inconsistent with racist expression. Accordingly Mount Holyoke's regulations provide: To enter Mount Holyoke College is to become a member of a community.... Our community is committed to maintaining an environment in which diversity is not only tolerated, but is celebrated. Towards this end, each member of the Mount Holyoke community is expected to treat all individuals with a common standard of decency.47 Marquette University defines itself "as a Christian and Catholic institution. . . dedicated to the proposition that all human beings possess an inherent dignity in the eyes of their Creator and equality as children of God."48 Accordingly Marquette's regulations seek to maintain "an environment in which the dignity and worth of each member of its community is respected" and in which "racial abuse or harassment . . . will not be tolerated. 49 Mary Washington College sets forth what appears to be a secular version of this same educational mission; its regulations provide that the "goal of the College is to help all students achieve academic success in an environment that nurtures, encourages growth, and develops sensitivity and appreciation for all people."50 Accordingly "any activity or conduct that detracts from this goal-such as racial or sexual harassment-is inconsistent with the purposes of the college community."51 In such instances, racist expression interferes with education not merely because of general harms that it may inflict on groups or individuals or the marketplace of ideas, 52 but also, and more intrinsically, because racist expression exemplifies conduct that is contrary to the particular educational values that specific colleges or universities seek to instill.5

## Frontlines

### A2 Underground

#### Underground predictions are false – racists aren’t looking to discuss their ideas and preventing public circulation prevents violence. Comparisons between US and Britain prove. Rumney 03

Rumney, Philip NS [Reader in Law, Division of Law, Sheffield Hallam University]. "The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists." Comm. L. World Rev. 32 (2003): 117.

\*\*Brackets in card

According to Strossen, the British experience 'confirms [the] prediction'¶ that the 'most [regulation] could possibly achieve would be to¶ drive some racist thought and expression underground, where it¶ would be more difficult to respond to such speech and the underlying¶ attitudes it expresses'. 7 6 To support this particular view Strossen¶ quotes Lasson 77 as stating:¶ [A] major effect of this act has been to leave certain organizations with¶ but two choices: to restrict their circulation to the members of the specific¶ club, or to be more careful in their language. However, although¶ this seems like a positive development, it is possible that provocatively¶ racist messages, by being concealed in genteel, and outwardly acceptable¶ language, could be disseminated to an even larger number of¶ people-thereby promoting more racial ill-will rather than decreasing¶ such feelings.' 78¶ In fact, far from 'confirming' Strossen's prediction that regulation¶ forces racist 'thought and expression' underground, thereby making it¶ more difficult to challenge, Lasson merely speculates as to the possible¶ effect of the British legislation. Hence his use of the words 'possible'¶ and 'could'. It is even less clear how precisely the incitement law would¶ have any impact upon racist 'thought' as Strossen claims.'79 Likewise,¶ in the context of Lasson's comments, there is no evidence whatsoever¶ that hate speech regulation in Britain has, in fact, increased racial ill-will. Indeed, it is evident from attitude surveys that there has been a gradual reduction in racist beliefs in Britain, a trend that appears to¶ have accelerated in more recent years, 180 as well as a general reduction¶ of support for the racist political parties since the 1970s. 181¶ The claim that regulation forces racism underground indicates a¶ fundamental misunderstanding of both the actions of racists and the¶ scope of the British incitement law. The recent history of racism in¶ Britain indicates that it is only those who engage in violence and other¶ unlawful activities, or who promote such activities along with their¶ extreme racist beliefs, who exist 'underground'. 18 The reality is that¶ the incitement law leaves most forms of racist expression entirely¶ unregulated. Indeed, a range of racist organizations including the¶ largest racist group in Britain, the British National Party, can still¶ operate openly and legally, fight elections, distribute its literature and¶ has even had televised party election broadcasts. 183 Clearly, the incitement¶ provision is a trade-off between attempting to control some of¶ the more vicious and provocative racist expression, with the needs of¶ plurality that one would expect in a democratic society. Indeed, the¶ incitement law in this respect does show some recognition that even¶ racist speech may 'include a point of view that the speaker is entitled¶ to express and his audience hear'."¶ In addition, there is in reality little evidence that many of the methods¶ of challenging racism that Strossen advocates (such as engaging¶ in discussion and debate, or providing racists with counselling8 5¶ )¶ have been more successful than regulation when they are judged against some of the criteria she uses to judge hate speech laws. 18 6 For¶ example, non-regulatory measures have not prevented extremist racists¶ and their beliefs from going 'underground', and clearly have not¶ prevented the dissemination of racist ideas; in fact, the exact opposite¶ is true. This is evidenced first by the fact that there has been a substantial¶ growth in militia and anti-government groups in the United¶ States, many of which are secretive and do not appear to seek out¶ discussions with those to whom they are opposed. 187 Indeed, it has¶ been argued that there is a link between the hate speech that the First¶ Amendment has permitted and the rise of such groups.'88 Secondly, it¶ has been noted that whilst there has been a decline in the membership¶ of some extremist groups in the US, racism has entered the mainstream¶ of political life:¶ American extremism has mainstreamed ... Important elements of the¶ religious right are infected with extremism, and there are substantial¶ similarities between them and powerful, radical demagogues on the¶ American political scene. Thus a politicized extremism with a popular¶ base and operating within [the Republican Party] is appearing in the¶ United States for the first time in many years. 18 9¶ The point is that not only do First Amendment values appear to have¶ failed in preventing the spread of racism and extremism in the United¶ States, the First Amendment may have assisted this spread. Those¶ means of challenging racism that are consistent with the First Amendment¶ are arguably of little interest to groups at the margins, who¶ operate 'underground' out of necessity, not because of restrictions on¶ free speech. Such groups are not interested in debate and discussion,¶ as Barnes notes: 'Expressions of violent hatred cannot be answered¶ under the more speech paradigm because speech is not the goal:¶ terrorism is the stated objective, an intentional silencing of the victim."910¶ As a result, a number of violent racist groups have operated¶ within the United States. 191 While Britain has also had similar problems¶ they have been on a much more limited scale.'92 One explanation for this, though certainly not the only one, is that the incitement¶ provision has at least, in accordance with its aims, stemmed the flow¶ of inflammatory and provocative material that can be linked to organized¶ racist violence. This may also have had an impact on the ability of¶ extremist groups to recruit new members.

#### Hate speech bans are good – underground movements are less effective and destructive, and there are still plenty of people who would be deterred and they allow for coalitions of targeted groups to fight back. Parekh 12

Parekh, Bhikhu (2012) ‘Is There a Case for Banning Hate Speech?’, in Herz, M. and Molnar, P. (eds.) The Content and Context of Hate Speech: Rethinking Regulation and Responses. Cambridge: Cambridge University Press, pp. 37–56. EE

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups. When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their oper- ations more difficult and denies them the opportunity to link up with other similar groups and recruit their members. While the ban might alienate extremist groups, it has the compensating advan- tage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### Incentives for hate speech come from esteem boosts, which don’t happen for hate crimes in the same way. There’s no tradeoff between blowing off steam and acts of violence. Dharmapala and McAdams 05

Dharmapala, Dhammika [Assistant Professor of Economics at the University of Connecticut.], and Richard H. McAdams [Guy Raymond Jones Professor of Law at the University of Illinois College of Law]. "Words that kill? An economic model of the influence of speech on behavior (with particular reference to hate speech)." The Journal of Legal Studies 34.1 (2005): 93-136.

Conventional criticisms of hate speech frequently focus on the subjective harm it imposes¶ on its targets. This focus, however, creates severe practical obstacles to regulation because it may¶ not be possible to prevent that harm. There are two problems. First, there is an unappealing¶ trade-off in how one defines hate speech: an overly broad definition may burden non-offensive¶ speech, while a narrow definition – one that attempts to raise the costs only for the harmful¶ speech – may allow racists to shift to a different form of expression, arguably causing the same¶ ill effects on targets as the prohibited expression. American history is full of racially coded¶ phrases, whereby one raises racist concerns without explicit references to race. One might claim,¶ therefore, that any narrowly targeted regulation will fail to raise the cost of hate speech, while¶ any broad regulation is excessively restrictive. A second problem is anonymity. Speakers may¶ react to the formal or informal penalties on hate speech by shifting to anonymous speech, writing¶ their hate messages on buildings or sidewalks when no one is watching, or distributing such¶ messages in untraceable flyers. While this makes detection and enforcement very difficult, it¶ may cause the same harm to the targets as would identified (non-anonymous) messages.¶ These practical problems are less severe, however, when the harm to be avoided is the¶ one we identify: the incentives hate speech gives to potential hate offenders. First, under our¶ approach, the definitional trade-off is less stark because a relatively narrow definition of hate¶ speech may be sufficient to reduce hate crime. For example, to reduce the expected esteem¶ benefits from committing a racially motivated murder, it is only necessary to raise the costs of¶ speech that conveys approval of such murders. Because most people disapprove strongly of¶ murder, it requires strong and explicit language to convince others than one actually approves of it. One can create the benefit we identify merely by raising the costs of this strong and explicit¶ language.¶ Second, the problem of anonymous hate speech is likely to be irrelevant in our¶ framework. The harm we identify from hate speech is that it conveys credible information about¶ the number of individuals who will esteem perpetrators of hate crimes (or do so to a certain¶ intense degree). Overt hate speech, where the speakers are clearly identified, provides more¶ credible information about the number of hate crime approvers than does anonymous hate¶ speech. The reason is that, when one cannot identify the source of many anonymous messages,¶ one usually cannot know how many sources there actually are. It is always possible that just one¶ individual produces all the anonymous messages (an anonymous message may of course claim to¶ represent a large number of individuals, but such claims are usually cheap talk). Thus, potential¶ offenders using Bayesian inference will tend to discount anonymous speech in estimating the¶ number of approvers.32 Although the correspondence bias suggests that people will infer more¶ hate crime approval from more hate speech, it does not suggest any particular bias to this¶ discounting of anonymous speech. Thus, if potential offenders are subject to the correspondence¶ bias, their downward revision of their estimate following a reduction in the level of identified¶ hate speech will not be fully offset even if all or some speakers engage in anonymous speech.¶ 5.2) Are Hate Speech and Hate Crime Substitutes?¶ Finally, we briefly consider a contrary theory. Our model of the behavior of potential¶ offenders has conceptually separated them from speakers – those whose esteem is sought.¶ However, it is also possible that the same individual’s choice of speech may interact with her¶ decision regarding whether to commit the crime. If so, then hate speech and hate crime may be¶ either complements or substitutes. In the latter case, allowing the individual the chance to “blow¶ off steam” by engaging in hate speech may reduce the likelihood that she will also commit a hate¶ crime; this would represent a caveat qualifying some of the claims we have made in this paper.¶ However, it is likely that the distribution of intrinsic utility (B – C) across individuals is such that¶ there are very few individuals who would commit a hate crime, even for a high level of esteem,¶ while there are many more individuals who may engage in hate speech if the costs are¶ sufficiently low. Then, most speakers are inframarginal with respect to the choice of whether to¶ commit the crime, while their hate speech does influence the (relatively small number of) individuals who are on the margin with respect to the crime. Moreover, the opportunities for¶ gaining esteem from racists for being one of a relatively large number of individuals engaging in¶ hate speech are severely limited in comparison to the esteem that can be gained by committing¶ hate crimes. Thus, any “substitution effect” is likely to be a very minor factor.

#### The argument that hate speech will be driven underground ignores the impact that speech polices will have on people. Delgado and Yun 94

Delgado, Richard, and David Yun. "The Neoconservative Case Against Hate-Speech Regulation." Https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2112274. 1994. SP

How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal, the racist who is known is less dangerous than the one who is not, when she argument ignores is that there is a third alternative, namely the racist who is cured, or at least deterred by rules, policies, end official statements so as to no longer exhibit the behavior he or she once did. Since most conservatives behave that roles and penalties change conduct (indeed they are emote the strongest AmPonents of hanry penalties for crime), the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded, Of course, the conservative may argue that regulation has costs of its own—something even the two of us would concede—but this is a different argument from the bellwether on, Another neoconservative objection is that silencing the racist through legislation might deprive the mauve comminity of the 'down hall" opportunity it has to discuss and analyse issues of race when incidents of racism come to light.. But campuses could told three meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, that will continue to be some number of incidents of racist week and behavior. The difference is that now there will be the possibility of campus discipline, hearings, which are even more barely to instigate the "town hell" discussions the argument assumes are desirable. Because the bellwether argument ignores that wiles will have at least some editing effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

#### That forcing racists to prohibit their speech increases violence is empirically denied and paternalistic. Delgado and Yun ‘94

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D. 1974, University of California, Berkeley. David H. Yun – Member of the Colorado Bar. J.D. 1993, University of Colorado. “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview> JJN

A. The Pressure Valve Argument The pressure valve argument holds that rules prohibiting hate speech are unwise because they increase the danger racism poses to minorities. 50 Forcing racists to bottle up their dislike of minority group members means that they will be more likely to say or do something hurtful later. Free speech thus functions as a pressure valve, allowing tension to dissipate before it reaches a dangerous level. 1 Pressure valve proponents argue that if minorities understood this, they would oppose antiracism rules. The argument is paternalistic; it says we are denying you what you say you want, and we are doing it for your own good. The rules, which you think will help you, will really make matters worse. If you knew this, you would join us in opposing them. Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future. 2 Moreover, others may y follow suit. 3 Human beings are not mechanical objects. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. In particular, we use symbols to construct our social world, a world that contains categories and expectations for "black," "woman," "child," "criminal," "wartime enemy," and so on.5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. But social science experiments demonstrate that the way we categorize others affects our treatment of them. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously. 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions.59 At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe.6 " The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well continue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalizewhat we do teaches others that they may do likewise. Pressure valves may be safer after letting off steam; human beings are not.

### A2 Rosenberg/Fight Words solves

#### Fighting words is not enough – the Counterplan text creates clear regulations which means no vagueness. Glenn and Stephens 96

Glenn, Richard A., and Otis H. Stephens. "Campus Hate Speech and Equal Protection: Competing Constitutional Values." Widener J. Pub. L. 6 (1996): 349. VC

Beyond strictly legal considerations, universities have fundamental responsibilities in combatting hate speech. As one university administrator remarked, "'[e]ducators have special opportunities to combat racism and intolerance through teaching. . . . A college or university education ought to prepare students to do many things. One is to enter the world with thoughtful sensitivity about the diversity that makes our society strong.'" 225 Universities should be prepared to do more than punish blatant forms of hate speech. Greater efforts should be made to ensure that racial and other minorities experience full participation in the intellectual and cultural life of the university community. Some universities are making broad-gauged efforts along these lines. 226 It is generally agreed that faculty, [\*383] administrators, and students should "establish and maintain a tone of morality and civility on campus." 227 Universities likewise have a responsibility to raise awareness and to encourage peaceful, rational discussions of virulent forms of discrimination. Universities can balance their commitments to free speech and non-discrimination by adopting narrowly drawn, explicitly defined policies that restrict only intentional, personalized verbal attacks. Such "carefully drafted and implemented policies will preserve the educational environment by promoting vigorous academic discourse, diversity, and equality." 228 In the university setting as elsewhere in society, it is essential to recognize that individual freedoms will be accorded legitimacy only to the extent that they are not perceived as serious threats to the existence of a comparatively stable community. In this context, it is possible for universities to develop policies that advance their educational missions while recognizing the important values of free speech and equality. VI. CONCLUSION In conclusion, we emphasize that traditional First Amendment protections, although essential, are not alone sufficient as a basis for resolving the hate speech issue on American campuses. Other constitutional values, chiefly equality, personal autonomy, and privacy, are also implicated. More is at stake here than the core tenets of political speech, important as these are in a democratic society. Thus far the Supreme Court's attempts to identify and define limited categories of unprotected or less protected speech have not come to grips with the complexity of the hate speech problem. For example, the "fighting words" doctrine, [\*384] with its macho overtones, 229 means little to many victims of hate speech for whom violent response is neither realistic nor acceptable. In addition, First Amendment interpretation focuses on individual rights. 230 Yet hate speech both on and off campus has an important group dimension. This component is not easily articulated within the traditional context of individual First Amendment liberties. It is part of a much larger debate about rights, human nature, and justice. Thus, in addressing the hate speech issue, campus policy-makers should not expect courts to provide more than partial and inconclusive answers.

#### Status quo jurisprudence fails to account for the danger that minority studetns face. It’s overly restrictive – Bhikhu 12

Parekh, Bhikhu. "Is there a case for banning hate speech?." The content and context of hate speech: Rethinking regulation and responses (2012): 37-56.

The "clear and present danger" test fails to address the¶ long-term effects of hate speech on the development of autocratic¶ governments.1 4 Courts continue to apply this test in¶ hate speech cases. This test has been refined to mean that¶ laws aimed at preventing hate speech are constitutional only¶ if they target "advocacy... inciting or producing imminent¶ lawless action."15 First Amendment jurisprudence states that¶ governments only have a compelling reason to prohibit those¶ expressions capable of inciting immediate lawless actions.¶ Contrary to the Supreme Court's theory, however, the seeds¶ of hate speech often lie dormant until conditions permit them¶ to sprout into social cancers that pray on outgroups. 16 The¶ "clear and present danger" test only recognizes those utterances¶ that can elicit pugilistic responses as dangerous. The¶ test is too narrow, as it fails to consider the real nature of¶ racist "indoctrination," which develops gradually.1 Beauharnais v. Illinois is the only First Amendment Supreme¶ Court decision where the majority reflected on the historical¶ background of a statute restricting hate speech. 18 At¶ issue was an Illinois law prohibiting the expression of racist,¶ group libel. The Court found that, based on Illinois' history of¶ racist violence, the legislature reasonably concluded that bigoted¶ utterances "played a significant part" in that turmoil.319¶ Predicating its decision on empirical evidence about the potential¶ dangers of racially inflammatory speech, the Court¶ upheld the defendant's conviction."' Beauharnais considered¶ historical facts rather than simply abstract theory. Therefore,¶ it represents a more discerning opinion about the potential¶ harms of hate speech. Moreover, since Beauharnais' utterances¶ were libelous, the Court did not reach the "clear and¶ present danger" test issues.321¶ However, the Court failed to follow the Beauharnais approach¶ of considering the historical perspective when formulating¶ the current common law restriction against the enactment¶ of content-specific hate speech laws. In R.A.V. v. St.¶ Paul, the majority focused exclusively on protecting the¶ speaker's First Amendment rights. 2 The justices should¶ have considered a broader constitutional picture involving the¶ balancing of First Amendment values against those of the¶ Thirteenth and Fourteenth Amendments. Justice Scalia,¶ writing for the majority, failed to recognize that freedom of¶ speech, despite being a right itself, is a powerful tool that can¶ be manipulated to infringe on constitutional liberties."n Furthermore,¶ the majority did not balance the rights of bigots to express their views against the rights of targeted outgroups¶ to be protected from being buried by the landslide of bigotry.¶ For example, Justice Scalia did not reflect upon the available¶ historical examples of cross burnings that instigated the¶ lynchings of Blacks. Burning a cross on a Black family's lawn¶ raises issues beyond the free speech of the culprit 2 4 Hate¶ speech raises concerns of the personal safety of outgroup¶ members, thereby inhibiting them from freely traveling in¶ their own communities. Sometimes, fearing for their safety,¶ outgroup members are forced to move from their homes. After¶ a cross has been burnt on their lawn, a Black family is¶ likely to be leery about approaching their own house. Finally,¶ the spread of bigotry signals a diminution of egalitarian ideals¶ in society. Not only is the United States a society that¶ tolerates the value of dialogue, but it is also a nation committed¶ to the principles of racial and ethnic equality.325¶ The First Amendment should not protect hate speech¶ that incites others to commit violent or oppressive acts, regardless¶ of when the intended harm is to be perpetrated.326¶ First Amendment jurisprudence should be reevaluated to¶ avoid Holmes's relativistic philosophy and its potentially antidemocratic¶ consequences. Instead of permitting the most¶ dominant forces of society to express any and all forms of hate¶ speech, no matter how averse the effect might be on equal¶ rights, expressions with a reasonable potential to lead dominant¶ groups to maltreat outgroups should be prohibited. At¶ the very least, the potential of hate speech to cause harm¶ should be evaluated in light of historical reality, rather than¶ abstract theory. Unlike the United States, many foreign countries recognize¶ the dangerousness of hate speech and have enacted¶ criminal laws to protect targeted outgroups from expositions¶ of bigotry. 7 In its protection of bigoted rhetoric, the United States stands apart from the many democracies that punish¶ the expression of hate propaganda.3 28 Laws penalizing the¶ dissemination of hate speech exist in the following countries:¶ Israel, Germany, France, Canada, England, Belgium, Brazil,¶ Cyprus, Italy, the Netherlands, Austria, and Switzerland. 29¶ In Germany, the law seeks to preserve freedom of expression¶ while precluding a totalitarian government from reasserting¶ its dominion.330 German criminal law prohibits undemocratic¶ speech, including "the use of... symbols, flags,¶ uniforms, and forms of address" associated with "organizations¶ that advocate a non-democratic government."331 Persons¶ using "flags, insignia, parts of uniforms, slogans and forms of¶ greeting" to propagate undemocratic political parties, such as¶ the National Socialist party, are subject to three years of imprisonment¶ or a fine.332 Spreading or importing propaganda¶ supportive of unconstitutional and anti-constitutional political¶ parties or associations, such as the Nazi party, may also¶ result in imprisonment and a fine."33¶ Germany determined that protecting human rights is¶ more important than tolerating hate speech.3¶ " Germany also¶ criminalizes the solicitation of others to commit acts of violence¶ and arbitrary oppression against members of the population;¶ "incite hatred against" them; and "insult them, maliciously¶ exposing them to contempt or slandering them."335¶ Another section of the German Criminal Code prohibits persons¶ from disseminating publications or broadcasts that incite¶ others to racial animus or that depict "cruel or otherwise inhumane acts."336 Such measures are meant to stem the tide¶ of the persistent bigotry in Germany."' These legal measures¶ protect the German population against expressions of hatred¶ and incitements to violence, regardless of whether the threat¶ of harm is imminent.¶ Canadian law also recognizes the potential dangers of¶ hate speech. Restrictions on hate propaganda are balanced¶ against the comprehensive guarantees of free speech provided¶ in the Canadian Charter of Rights and Freedoms.338 Canadian¶ criminal law prohibits public utterances that promote¶ "hatred against any identifiable group."3 9 The penalty for¶ this form of speech is a maximum of two years imprisonment."¶ ° Further, inciting others to commit genocide is punishable¶ by up to five years imprisonment.34' Unlike the¶ United States Supreme Court precedents, which only place¶ restrictions on hate speech that presents a "clear and present¶ danger" of harm," 2 the Canadian Criminal provisions are not¶ so restrictive. Promotion of genocide, regardless of when the¶ speaker intends it to be carried out, is criminally punishable.¶ In making these laws, the Canadian legislature realized the¶ long-term harmful influence of hate propaganda. Canadian¶ laws are intended to protect identifiable groups from heinous,¶ inhumane, and violent crimes.¶ As the legislatures of other Western countries recognize,¶ society has a greater interest in protecting outgroup members¶ from the threat of present and future harms resulting from¶ hate speech than it has in protecting bigots' right to call for¶ persecutions against outgroups. Granting unrestricted verbal freedom at the expense of outgroup members' rights weakens¶ democracy because all members of the society cannot share¶ equally in its benefits. Increased suffering in one segment of¶ society decreases the overall happiness of the political community.¶ Speech intended to deny civil rights to outgroups is¶ meant to suppress, not further, democratic ideals. Therefore,¶ in the best interest of equality and pluralism, there must be¶ certain limits on hate speech.

### A2 Counterspeech

#### Market place fails – cp necessary for successful counter speech. Multiple warrants - Bhikhu 12

Parekh, Bhikhu. "Is there a case for banning hate speech?." The content and context of hate speech: Rethinking regulation and responses (2012): 37-56.

Secondly, it is argued that evil ideas are best defeated not by banning them but by subjecting hem to a critical scrutiny and confronting them with opposite ideas. The answer to hate speech is not less but more speech. This argument makes a valid point but exaggerates it. It is true that respect for fellow human beings requires us to engage with their misguided but sincerely held beliefs, and that we should tackle the basis of these beliefs rather than suppress their public expressions. There are however limits to this approach. The market place of ideas, on whose competitive scrutiny and fairness this approach relies, is not neutral and does not provide level playing fields. It has its biases, and operates against the background of prevailing prejudices. When racist and xenophobic ideas are an integral part of a society’s culture, they appear self-evident, commonsensical, obvious, and enjoy a built-in advantage over their opposites. Furthermore, a fair competition between ideas requires that they should all enjoy equal access to the market place, including the popular media and other agencies through which they are communicated and critically engage with each other. This is rarely the case. Even assuming that the market is neutral and equally accessible to all bodies of ideas, it is naïve to imagine that evil ideas would always be worsted in their battle with good ones. Ideas do not operate in a social vacuum. They are bound up with interests, the prevailing structure of power and so on: the victory often goes to those enjoying the patronage of powerful groups or willing and able to manipulate people’s fears. Even so far as material products are concerned, competition does not ensure that quality triumphs over cheap and uniform products. There is no reason to expect a different outcome at the level of ideas. This is not to deny the importance of the market place of ideas, but rather to argue that, like the market in general, it needs to be subjected to certain regulative principles. This is what the ban on hate speech does. By allowing ideas to be freely expressed provided that they do not violate certain norms of mutual respect and civility, it ensures their fair competition, counters the weight of prevailing prejudices, and encourages the participation of those likely to be intimidated or alienated by hate speech.

#### Arguing minorities should engage in a dialogue with aggressors is rooted in paternalism, ineffective, and puts the oppressed further at risk. Delgado 94.

Richard Delgado. David H. Yun. “Pressure Valves and Bloodied Chickens: AN Analysis of Paternalistic Objections to Hate Speech Regulation”. California Law Review. July 1994. AGM

Defenders of the First Amendment sometimes argue that minorities should talk back to the aggressor. .[FNSS] Nat Hentoff, for example, writes that antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes selfireliance, and strengthens one’s self-image as an active agent in charge of one’s own destiny. [FN86] The "talking back" solution to campus racism draws force from the First Amendment principle of "more speech,” according to which additional dialogue is always a preferred response to speech that some find troubling. [FN 87] '884 Proponents of this approach oppose hate speech rules, then, not so much because they limit speech, but because they believe that it is good for minorities to learn to speak out. A few go on to offer another reason: that a minority who speaks out will be able to educate the speaker who has uttered a racially hurtful remark. [FN88] Racism, they hold, is the product of ignorance and fear. If a victim of racist hate speech takes the time to explain matters, he or she may succeed in altering the speaker’s perception so that the speaker will no longer utter racist remarks. [FN89] How valid is this argument? Like many paternalistic arguments, it is offered blandly, virtually as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and therefore believe themselves able to make things so merely by asserting them as true. [FN90] They rarely offer empirical proof of their claims, because none is needed. The social world is as they say because it is their world: they created it that way. [FN91] In reality, those who hurl racial epithets do so because they feel empowered to do so. [FN92] Indeed, their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous, as calling for a forceful response. Often racist remarks are delivered in several-on-one situations, in which responding in kind is foolhardy. [FN93] Many highly publicized cases of racial homicide began in just this fashion. A group began badgering a black person. The black person talked back, and paid with his life. [FN94] Other racist remarks are delivered in a cowardly fashion, by means of graffiti scrawled on a campus wall late at night or on a poster placed outside of a black student’s dormitory door. [FNQS] in these situations, more speech is, of course, impossible. 885 Racist speech is rarely a mistake, rarely something that could be corrected or countered by discussion. What would be the answer to ”Nigger, go back to Africa. You don’t belong at the University“? "Sir, you misconceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future”? [FN96] The idea that talking back is safe for the victim or potentially educative for the racist simply does not correspond with reality. it ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human community as an invitation for discussion.

#### Counterspeech is ineffective, not used, and causes psychological harms. Brown 15

Alex Brown. Mar 5, 2015. “Hate Speech Law: A Philosophical Examination.” <https://books.google.com/books?hl=en&lr=&id=9AfwBgAAQBAJ&oi=fnd&pg=PP1&ots=-rlAFrf3vB&sig=dAwrwWN3IC1nC_M5CvQeetBjbmo#v=onepage&q=majeed&f=false> LM

More generally, there is some evidence to suggest that barriers to counterspeech are the greatest for victims of face-to-face hate speech (e.g., the use of racial insults, slurs, or derogatory epithets directed at specific individuals in person). As mentioned in Ch. 3 [3.1], in her study of hate speech Nielsen found that the most common reaction to racist hate speech on the part of those targeted by it is to ignore the remark and simply leave the situation. Only 28% of people of color, for example, reported making verbal responses to racist speech (Nielsen 2002: 277), and even then 'only when they ate in situations where they felt relatively safe, such as a crowded public area’ (ibid.). This finding undermines the plausibility of the claim that counterspeech by the victims of face-to-face hate speech is a no less effective but less restrictive alternative to hate speech law; at least, that is, when it comes to instantaneous, face-to-face counterspeech. This claim overlooks a powerful psychological mechanism controlling human responses to conflict situations. Nielsen reports that part of the problem is fear that speaking back may provoke yet more hate abuse or even violence (ibid.). This is certainly the reported experience of Matsuda, who in the late 1980s received hate mail as a consequence of speaking M public about her views on freedom of expression and hate speech, and subsequently made a decision not to publish her ideas in the popular press for fear of receiving threats against her person (remarks in Borovoy et al. 1988-1989, 3631. Similarly, there is evidence to suggest that this fear has led some complainants in Australia to withdraw complaints about hate speech even under the private processes of dispute resolution established by hate speech legislation (e.g., Gelber 2002: 851. There is also a psychological cost that might be borne by the victims of hate speech if society expects them to take sole responsibility for tackling the problem. If they are made to feel that it is their duty or obligation to engage in counterspeech, what happens when they do not? Will this become yet another (illegitimate) source of shame or self-loathing? Another part of the problem is that dealing with the effects of hate speech can be time consuming, reducing the time that someone might have to actually engage in counterspeech. This is the reported experience of the writer Amanda Hess, who suffered online harassment and intimidation based on her gender. 'I've spent countless hours over the past four years logging the online activity of one particularly committed cyberstalker just in case' (Hess 2014). At this stage, it might be pointed out that using legal restrictions to com-bat hare speech also sucks up a lot of time. The victims of hate speech may need to expend a considerable amount of time as complainants, plaintiffs, or even chief witnesses for the prosecution in criminal cases. And then there are the judges and legal scholars who in some cases have spent decades arguing against one another, time that might have been profitably spent doing other things, such as eloquently speaking out against hate speech (cf. Delgado and Stefanic 2009: 360-361). However, it is surely relevant that when victims of hate speech do decide to take a legal course of action they can normally expect to receive not inconsiderable support from legal professionals, who sham the time burden. Counterspeech undertaken by the victims of hate speech is often without this specialist support.

#### Counterspeech isn’t the best avenue – it places minorities in a dangerous situation and forces the burden of changing society onto them. Delgado and Yun ‘94

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D. 1974, University of California, Berkeley. David H. Yun – Member of the Colorado Bar. J.D. 1993, University of Colorado. “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview> JJN

D. "More Speech"-Talking Back to the Aggressor as a Preferable Solution to the Problem of Hate Speech Defenders of the First Amendment sometimes argue that minorities should talk back to the aggressor.85 Nat Hentoff, for example, writes that antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny.8 6 The "talking back" solution to campus racism draws force from the First Amendment principle of "more speech," according to which additional dialogue is always a preferred response to speech that some find troubling.87 Proponents of this approach oppose hate speech rules, then, not so much because they limit speech, but because they believe that it is good for minorities to learn to speak out. A few go on to offer another reason: that a minority who speaks out will be able to educate the speaker who has uttered a racially hurtful remark."8 Racism, they hold, is the product of ignorance and fear. If a victim of racist hate speech takes the time to explain matters, he or she may succeed in altering the speaker's perception so that the speaker will no longer utter racist remarks.8 9 How valid is this argument? Like many paternalistic arguments, it is offered blandly, virtually as an article of faith. In the nature of paternalism, those who make the argument are in a position of power, and therefore believe themselves able to make things so merely by asserting them as true.90 They rarely offer empirical proof of their claims, because none is needed. The social world is as they say because it is their world: they created it that way.91 In reality, those who hurl racial epithets do so because they feel empowered to do so. 92 Indeed, their principal objective is to reassert and reinscribe that power. One who talks back is perceived as issuing a direct challenge to that power. The action is seen as outrageous, as calling for a forceful response. Often racist remarks are delivered in several-on-one situations, in which responding in kind is foolhardy. 93 Many highly publicized cases of racial homicide began in just this fashion. A group began badgering a black person. The black person talked back, and paid with his life.94 Other racist remarks are delivered in a cowardly fashion, by means of graffiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door.95 In these situations, more speech is, of course, impossible. Racist speech is rarely a mistake, rarely something that could be corrected or countered by discussion. What would be the answer to "Nigger, go back to Africa. You don't belong at the University"? "Sir, you misconceive the situation. Prevailing ethics and constitutional interpretation hold that I, an African American, am an individual of equal dignity and entitled to attend this university in the same manner as others. Now that I have informed you of this, I am sure you will modify your remarks in the future"? 96 The idea that talking back is safe for the victim or potentially educative for the racist simply does not correspond with reality. It ignores the power dimension to racist remarks, forces minorities to run very real risks, and treats a hateful attempt to force the victim outside the human community as an invitation for discussion. Even when successful, talking back is a burden. Why should minority undergraduates, already charged with their own education, be responsible constantly for educating others?

### A2 Liberation/Institutional Reform

#### Allowing racist expression goes hand in hand with institutional colorblindness - racist expressions are a friendly reminder of a symbolic history of racism that prevents challenging a larger network of white supremacy. The cp is prior question. Moore and Bell 17

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

Rather than being an anomaly, overtly racist expression on college campuses represents an element of white institutional space with two attendant functions. First, the activities and forms of expression used in these incidents serve as a signifier of the history of racial exclusion and oppression, which was enforced through brutality and violence in the United States. As such, these incidents become a form of symbolic violence that reinscribes notions of inherent inferiority and non-belonging for people of color through invocation of a historical precedent that reserved access to institutional spaces and their corresponding resources (such as education) for whites only, often by using physical and psychological violence as a deterrent against black challenges to such exclusion. Second, in harking back to a historical form of racism that is widely accepted as unpalatable today, these forms of racist expression tacitly reinforce the legitimacy of color-blind racist practices. Each incident of overt racial hostility functions as a reminder of the horrors of a racist history that color-blind frames disavow. Consequently, these incidents instantiate “real” racism and simultaneously dissociate real racism from color-blind racist, abstract liberalist institutional practices and discourses. Moreover, the regular, though ￼sporadic, occurrence of incidents of overt racist expression throughout the post–civil rights era provides regular opportunities for liberal communities to rally against racism—as defined in the limited manner of individual expressions of explicit racial hostility—and demonstrate a rhetorical commitment to abstract equality. By comparison, color-blind racism and color-blind racist institutional practices tend to look less serious and rarely if ever result in the same ire and protest, nor are they often thoughtfully considered as connected to these explicitly hostile racist incidents.¶ Signifying Racial History and Reinscribing Symbolic Violence¶ When a noose is seen hanging from a tree on a college campus, from a light fixture in a university library, or near the office door of an African American university professor, it connects to a specific historical meaning. The practice of lynching, specifically what Dray (2002) identifies as “spectacle lynching,” was a grotesque but common manner of exerting social control over the entire black community from the antebellum era until at least World War I. Often done in geographically significant locations (e.g., on trees in a central area of town or in a particular community), lynching was not only a mechanism of individual torture: the lynching itself as public spectacle was more important in its symbolism. Most lynchings involved torture far beyond the actual act of hanging by the neck; lynch mobs often first carried out various acts of torture on their victims including vicious physical beatings, rape (including sodomy), or setting them on fire. (Dray 2002). Some individuals who were lynched were, in fact, already dead, while for others death was imminent. The real significance, then, of lynching was its message to the black community as a whole: this barbarous torture can happen to you if you challenge whiteness or step outside the confines of your racially oppressed position (Dray 2002). ￼As a mechanism of symbolic violence, lynching served as a form of public spectacle torture, which evoked widespread terror that compelled black acquiescence to the racial order without the necessity for direct individual supervision or control.¶ The noose is directly tied to the brutal history of lynching. Therefore, when placed as an object or image in a public space, the noose signifies the symbolic violence that maintains the power structure—in this instance, the racial order that organizes the social space in the same manner that spectacle lynching did (Bourdieu 1989). So when a noose was placed outside of the office door of an African American professor at Columbia University’s Teachers College in 2007, the spectacle of the noose itself immediately evoked terror and outrage from the African American community at Columbia (Garland 2007). It is never necessary for the person who publically hangs or places an image of a noose in a public space to intend the object or image to have this meaning; in fact, because the noose garners its meaning through its historical connection to the social structure of racial oppression, the communicator’s motive is irrelevant. As a tool of racial oppression, the noose (the essential object needed to hang a body) is a cultural referent, a symbol whose meaning is known as a result of shared knowledge of a social and cultural context (van Dijk 1997): in this instance, the historical practice of lynching black people as a form of symbolic violence and social control.¶ Similarly, a burning cross and the garb adorned by the Ku Klux Klan signify a history of racial violence and white supremacy. These symbols are all linked to the practice of lynching and other forms of terroristic torture and violent repression aimed at African Americans throughout US history. As Matsuda and Lawrence (1993) note with regard to the symbol of a burning cross, “There is no Black person in America who has not learned the significance of this instrument of persecution and intimidation, who has not had emblazoned on his or her mind the image of Black ￼men’s scorched bodies hanging from trees” (133). Moreover, the word “nigger,” as constructed by white people as an epithet to denote black inferiority and the enforcement of systemic oppression, signifies racial oppression, exclusion, and the potential for violence (Delgado and Stefancic 2004). In 1993, the members of a white fraternity at Rider College invoked this signification of racial oppression, irrespective of their intent, when they held a party called “Dress Like a Nigger Night,” at which fraternity pledges were asked to “dress in a racially demeaning manner and go to the [fraternity] house for a work project” (Associated Press 1993). Because of its connection to the history of white supremacy, the mere utterance of the word in such a context brings about a reification of white power an¶ e both to the oppressive and often violent oppression of people of color throughout the history of this nation and to the contemporary racial social structure characterized by patterned societal racial inequality—that is, to systemic racism (Feagin 2006). Racist expression on college and university campuses, then, serves as a source of social control and symbolic violence in the same manner as in other social spaces. Hanging nooses, burning mock (or real) crosses, dressing up in Ku Klux Klan garb, performing mock reenactments of the violence of slavery, donning blackface in minstrel fashion, or deliberately enacting caricaturized, stereotypical black representations—all hark back to a history when the vast majority of institutions (including those of higher education) were “for whites only” and when the boundaries of those institutions were regulated through physical and symbolic violence. When racist speech and expression take place in institutional settings, such as in colleges and universities, these forms of communicative action reinscribe the relations of structural and cultural power that are essential elements of white ￼institutional spaces. This refashioning, reimagining and reenactment of some of the most sinister elements of Jim Crow racism using contemporary technologies and social forms signifies the continued outsider status and the alleged inferiority of people of color in these spaces. In addition, these spectacles involving the contemporary mobilization of the symbols of Jim Crow signify the continuing potential for symbolic and physical violence against people of color in these spaces despite the date and despite the appearance of color-blindness.

#### Lack of regulation constructs oppressive conditions – unrestricted free speech exacerbates those conditions. Delgado 2k

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. “TOWARD A LEGAL REALIST VIEW OF THE FIRST AMENDMENT.” Harvard Law Review. January 2000. JJN

E. “But Free Speech Made America Great” Some liberals and free speech absolutists deplore hate speech but argue against its regulation on the ground that freedom of expression has been minorities' best friend. [FN67] If they knew their own best interest, the argument goes, they would not be clamoring for its restriction. [FN68] A realist view of history shows, however, that our system of free speech law has not always served as a staunch ally of minority interests. In the sixties, black protesters sat in and were arrested and convicted; marched and were arrested and convicted; picketed and were arrested and convicted. [FN69] True, years later and after the expenditure of thousands of dollars of legal fees and untold hours of gallant lawyering, some of their convictions were reversed on appeal. But not always; courts often concluded that their speech was too muscular- -\*794 too intermixed with action--or too disruptive of property rights to risk reversal. [FN70] Speech may have been a vital tool for organizing and for quickening America's conscience; free speech law (at least as then interpreted) was not. [FN71] Just as that body of law did not play a central role in advancing minorities' struggle for civil rights, it also has not invariably furthered other social goals. Many believe uncritically that free speech and the First Amendment have made America great. [FN72] But consider: the U.S. today unquestionably leads the rest of the world in two principal areas--economic production and military might. Arguably, both flourished not because of freedom of expression but because of exceptions to it, such as patents, copyrights, trade secrets, and official (military) secrets. A truly free press and citizenry, able to speak, learn, and circulate ideas freely in these areas, would have interfered with the development of the prodigious industrial and military base that we now enjoy. [FN73] At the same time, hate speech and hard-core pornography, which until recently have been virtually unregulated by the legal system, contribute greatly to inequality and social pathology. In contrast to industrial and military production, which the American legal system favors by restrictions on speech, social relations among classes and groups receive less protection. If dominant groups may carelessly revile and disparage weaker ones, then it can hardly be a surprise that America ranks low among western industrialized nations in equality of wealth and income, [FN74] and that the figures for infant mortality, [FN75] life expectancy,\*795 [FN76] and broken families in black and brown communities [FN77] remain abysmal. It seems highly likely that tolerating virulent hate speech and vicious public depiction plays a part in allowing these forms of social misery to develop and persist. [FN78] Free speech, then, did not make America great. [FN79] It would be truer to say that the exceptions to it did, at the same time that the lack of regulation of hate speech contributed to social conditions that are becoming a source of national embarrassment. Legal-realist analysis would question the celebratory manner in which some equate free speech with a vehicle of progress, modernity, and social justice, and would aim instead for a more balanced approach that concedes that unregulated speech may sometimes exact a high cost.

#### That the first amendment has been used positively to aid minority struggles is historically disproven and paternalistic in that it assumes minorities can’t make decisions for themselves. Delgado and Yun ‘94

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D. 1974, University of California, Berkeley. David H. Yun – Member of the Colorado Bar. J.D. 1993, University of Colorado. “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview> JJN

C. Free Speech as Minorities' Best Friend: The Need to Maintain the First Amendment Inviolate Many absolutists and defenders of the First Amendment urge that the First Amendment historically has been a great friend and ally of social reformers. Nadine Strossen, for example, argues that without free speech, Martin Luther King, Jr. could not have moved the American public as he did. 8 Other reform movements also are said to have relied heavily on free speech.6 9 This argument, like the two earlier ones, is paternalistic-it is based on the supposed best interest of minorities. If they understood their own best interest, the argument goes, they would not demand to bridle speech. The argument ignores the history of the relationship between racial minorities and the First Amendment. In fact, minorities have made the greatest progress when they acted in defiance of the First Amendment.70 The original Constitution protected slavery in several of its provisions,7 1 and the First Amendment existed contemporaneously with slavery for nearly 100 years. Free speech for slaves, women, and the propertyless was simply not a major concern for the drafters, who appear to have conceived the First Amendment mainly as protection for the kind of refined political, scientific, and artistic discourse they and their class enjoyed. Later, of course, abolitionism and civil rights activism broke out.72 But an examination of the role of speech in reform movements shows that the relationship of the First Amendment to social advance is not so simple as free speech absolutists maintain. In the civil rights movement of the 1960s, for example, Martin Luther King, Jr. and others did use speeches and other symbolic acts to kindle America's conscience.73 But as often as not, they found the First Amendment (as then understood) did not protect them.7 4 They rallied and were arrested and convicted; sat in, were arrested and convicted; marched, sang, and spoke and were arrested and convicted. 75 Their speech was seen as too forceful, too disruptive. Many years later, to be sure, their convictions would sometimes be reversed on appeal, at the cost of thousands of dollars and much gallant lawyering. But the First Amendment, as then understood, served more as an obstacle than a friend. 76

#### Unlimited expression directly trades off with the ability to make institutional demands on the state. Delgado and Stefancic ‘92

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D., U. California-Berkeley, 1974. & Jean Stefancic - Technical Services Librarian, University of San Francisco School of Law. M.L.S., Simmons College, 1963; M.A., University of San Francisco, 1989. “IMAGES OF THE OUTSIDER IN AMERICAN LAW AND CULTURE: CAN FREE EXPRESSION REMEDY SYSTEMIC SOCIAL ILLS?” Cornell Law Review. September 1992. <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3571&context=clr> JJN

III. How THE SYSTEM OF FREE EXPRESSION SOMETIMES MAKES MATTERS WORSE Speech and free expression are not only poorly adapted to remedy racism, they often make matters worse-far from being stalwart friends, they can impede the cause of racial reform. First, they encourage writers, filmmakers, and other creative people to feel amoral, nonresponsible in what they do. 18 8 Because there is a marketplace of ideas, the rationalization goes, another film-maker is free to make an antiracist movie that will cancel out any minor stereotyping in the one I am making. My movie may have other redeeming qualities; besides, it is good entertainment and everyone in the industry uses stock characters like the black maid or the bumbling Asian tourist. How can one create film without stock characters? 18 9 Second, when insurgent groups attempt to use speech as an instrument of reform, courts almost invariably construe First Amendment doctrine against them.1 90 As Charles Lawrence pointed out, civil rights activists in the sixties made the greatest strides when they acted in defiance of the First Amendment as then understood. 191 They marched, were arrested and convicted; sat in, were arrested and convicted; distributed leaflets, were arrested and convicted. Many years later, after much gallant lawyering and the expenditure of untold hours of effort, the conviction might be reversed on appeal if the original action had been sufficiently prayerful, mannerly, and not too interlaced with an action component. This history of the civil rights movement does not bear out the usual assumption that the First Amendment is of great value for racial reformers. 19 2 Current First Amendment law is similarly skewed. Examination of the many "exceptions" to First Amendment protection discloses that the large majority favor the interests of the powerful. 19 3 If one says something disparaging of a wealthy and well-regarded individual, one discovers that one's words were not free after all; the wealthy individual has a type of property interest in his or her community image, damage to which is compensable even though words were the sole instrument of the harm. 194 Similarly, if one infringes the copyright or trademark of a well-known writer or industrialist, again it turns out that one's action is punishable. 19 5 Further, if one disseminates an official secret valuable to a powerful branch of the military or defense contractor, that speech is punishable. 19 If one speaks disrespectfully to a judge, police officer, teacher, military official, or other powerful authority figure, again one discovers that one's words were not free;1 9 7 and so with words used to defraud, 198 form a conspiracy, 1 99 breach the peace, 200 or untruthful words given under oath during a civil or criminal proceeding.20 1 Yet the suggestion that we create new exception to protect lowly and vulnerable members of our society, such as isolated, young black undergraduates attending dominantly white campuses, is often met with consternation: the First Amendment must be a seamless web; minorities, if they knew their own self-interest, should appreciate this even more than others. 20 2 This one-sidedness of free-speech doctrine makes the First Amendment much more valuable to the majority than to the minority. The system of free expression also has a powerful after-the-fact apologetic function. Elite groups use the supposed existence of a marketplace of ideas to justify their own superior position. 203 Imagine a society in which all As were rich and happy, all Bs were moderately comfortable, and all Cs were poor, stigmatized, and reviled. Imagine also that this society scrupulously believes in a free marketplace of ideas. Might not the As benefit greatly from such a system? On looking about them and observing the inequality in the distribution of wealth, longevity, happiness, and safety between themselves and the others, they might feel guilt. Perhaps their own superior position is undeserved, or at least requires explanation. But the existence of an ostensibly free marketplace of ideas renders that effort unnecessary. Rationalization is easy: our ideas, our culture competed with their more easygoing ones and won. 20 4 It was a fair fight. Our position must be deserved; the distribution of social goods must be roughly what fairness, merit, and equity call for.20 5 It is up to them to change, not us. A free market of racial depiction resists change for two final reasons. First, the dominant pictures, images, narratives, plots, roles, and stories ascribed to, and constituting the public perception of minorities, are always dominantly negative. 20 6 Through an unfortunate psychological mechanism, incessant bombardment by images of the sort described in Part I (as well as today's versions) inscribe those negative images on the souls and minds of minority persons. 20 7 Minorities internalize the stories they read, see, and hear every day. Persons of color can easily become demoralized, blame themselves, and not speak up vigorously.208 The expense of speech also precludes the stigmatized from participating effectively in the marketplace of ideas. 20 9 They are often poor-indeed, one theory of racism holds that maintenance of economic inequality is its prime function2 0 -and hence unlikely to command the means to bring countervailing messages to the eyes and ears of others. Second, even when minorities do speak they have little credibility. Who would listen to, who would credit, a speaker or writer one associates with watermelon-eating, buffoonery, menial work, intellectual inadequacy, laziness, lasciviousness, and demanding resources beyond his or her deserved share? Our very imagery of the outsider shows that, contrary to the usual view, society does not really want them to speak out effectively in their own behalf and, in fact, cannot visualize them doing so. Ask yourself: How do outsiders speak in the dominant narratives? Poorly, inarticulately, with broken syntax, short sentences, grunts, and unsophisticated ideas.21' Try to recall a single popular narrative of an eloquent, self-assured black (for example) orator or speaker. In the real world, of course, they exist in profusion. But when we stumble upon them, we are surprised: "What a welcome 'exception'!" Words, then, can wound. But the fine thing about the current situation is that one gets to enjoy a superior position and feel virtuous at the same time. By supporting the system of free expression no matter what the cost, one is upholding principle. One can belong to impeccably liberal organizations and believe one is doing the right thing, even while taking actions that are demonstrably injurious to the least privileged, most defenseless segments of our society.21 2 In time, one's actions will seem wrong and will be condemned as such, but paradigms change slowly.2 1 3 The world one helps to create-a world in which denigrating depiction is good or at least acceptable, in which minorities are buffoons, clowns, maids, or Willie Hortons, and only rarely fully individuated human beings with sensitivities, talents, personalities, and frailties-will survive into the future. One gets to create culture at outsiders' expense. And, one gets to sleep well at night, too. Racism is not a mistake, not a matter of episodic, irrational behavior carried out by vicious-willed individuals, not a throwback to a long-gone era. It is ritual assertion of supremacy, 214 like animals sneering and posturing to maintain their places in the hierarchy of the colony. It is performed largely unconsciously, just as the animals' behavior is. 2 15 Racism seems right, customary, and inoffensive to those engaged in it, while bringing psychic and pecuniary advantages.21 6 The notion that more speech, more talking, more preaching, and more lecturing can counter this system of oppression is appealing, lofty, romantic-and wrong.

### A2 Reverse Enforcement

Britain proves there’s no reverse enforcement – Strossen’s analysis is extremely flawed. Star this card it roasts their ev.

Rumney, Philip NS [Reader in Law, Division of Law, Sheffield Hallam University]. "The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists." Comm. L. World Rev. 32 (2003): 117.

It has also been suggested that Malik provides evidence that the incitement provision has been applied in a discriminatory manner.213 The problem with this claim is that there is absolutely no evidence to substantiate it. This claim appears to be based upon the grounds that Malik involved the prosecution of a black man. To suggest bad faith on the part of the Attorney-General, police, prosecutors, and several judges on such a flimsy basis is perhaps an indication of the weakness of much of the analysis in this area. Another version of this criticism is provided by Coliver who claims that incitement provisions 'lend themselves to abuse'.2 14 Why hate speech laws are inherently more likely to be open to abuse than a myriad of other civil and criminal laws is never made clear. In support of this claim Coliver cites the prosecution of black people noted earlier: 'the 1965 [Act] was used during its first decade more effectively against Black Power leaders than against white racists'. 215 If by 'more effectively' Coliver is referring to the number of prosecutions or convictions then her claim is misleading because it takes no account of why prosecutions were being instigated. In addition, she takes no account of the prosecution record after the mid-1970s. Similar criticisms can be made of the claim by Korengold that black people were, at least initially, 'disproportionately prosecuted' under the incitement provision.1 6 In this context Lester and Bindman noted in 1972 that 'there is a widespread and erroneous impression that most of the prosecutions [under the 1965 Act] have been brought against black people'.217 They also argue that the prosecutions directed at minorities were 'against a background of growing anti-white invective by members of the Black power movement'.2 18 It is worth noting the statistical breakdown of prosecutions during the period when the 1965 Act was in force. During this time there were prosecutions against fifteen individuals, with ten convictions. Five of the defendants were black and ten white. Of those convicted five were black and five white.2 19 It is also worth considering later prosecutions under the 1976 Act. Between 1976 and 1981 there were prosecutions against twenty-two individuals all of whom were white, with fifteen convictions. 220 When one examines domestic commentaries to see if there is any support for the claim that the incitement provision has been abused we find only limited evidence. In the work of Williams, 2 21 Dickey,222 Lester and Bindman, 223 Leopold, 224 Bindman, 22' Gordon, 226 and Cotterrel1 227 we find criticism of the legislation, but few make allegations of anything approaching an abuse of prosecutorial discretion. 28 One of the exceptions is an early commentary by Longaker, who questioned the decision to prosecute the defendant in Malik. He argued that where people such as Malik are not heard, the 'political system is correspondingly impoverished' 2 9 and that the incitement provision was 'not only short sighted but can easily exacerbate the problem [of racism]'. 23 1 Another early commentary argued that the wording of the incitement provision was 'potentially wide', 231 though as already noted, this does not appear to have caused significant problems. It appears that much of the criticism has been leveled at the fact that it is difficult to gain convictions under the incitement law.232 The claim that the incitement provision has been abused is further undermined by factual errors. In partly drawing upon the work of Neier, Strossen claims that the Race Relations Act 1965 has been: regularly used to curb the speech of blacks, trade unionists and antinuclear activists. In perhaps the ultimate irony, this statute which was intended to restrain the neo-Nazi National Front, instead has barred expression by the anti-Nazi League. 33 This statement contains numerous factual errors. The curbs on 'trade unionists' were neither legal restrictions, nor did they have anything to do with the incitement provision. 234 Neither were the prosecutions against peace activists. These were actually prosecutions brought under the Public Order Act 1936 and official secrets legislation as noted by Neier, but not Strossen.235 The curbs on the Anti-Nazi League involved temporary restrictions on public processions in an area where the police believed there was a serious danger of public disorder:236 a crucial point ignored by both Strossen and Neier. Crucially, these restrictions were not imposed under the Race Relations Act 1965, as there were and are no provisions under the incitement law that give the police any powers to ban demonstrations. 2 3 Rather, the law under which these restrictions were imposed was the Public Order Act 1936 which was introduced inter alia to clarify: how the authorities could judge a meeting or procession within existing case law; whether they were designed to convert ... or intimidate. It also attempted to increase protection for those subject to abuse or physical violence but stopped short of defending specific minorities or outlawing named organisations.2 38 As with the comments of Gey noted earlier, Neier argues that such provisions are evidence of a lack of commitment to free speech: 'lacking any equivalent to the First Amendment, British citizens whose freedom to speak has been curbed cannot challenge the Public Order Act ... .23 This, however, is not an accurate description. A ban on an anti-racist procession was in fact the subject of legal action under the European Convention on Human Rights in 1984. In Christians Against Racism and Fascism v United Kingdom,2 " 4 CARF, a peaceful, antiracist organization, was prevented from marching in the Metropolitan police district under a ban imposed on all marches for a two-month period. The ban was held not to contravene either Article 10 (freedom of expression) or Article 11 (freedom of assembly) of the Convention inter alia on the grounds that there was a significant danger that the march would result in serious public disorder and that the aim of preventing such disorder could not be achieved by less restrictive means.24 ' Unlike either Strossen or Neier, the Commission of Human Rights in its decision put this ban in context: the Commission finds that the situation existing in England at the relevant time, as described by the Government and apparently not disputed by the applicant ... , was characterised by a tense atmosphere resulting from a series of riots and disturbances, having been occasioned by public processions of the National Front and counterdemonstrations ... Although very considerable police contingents had been deployed on each occasion, it had not been possible to prevent grave damage to persons and property. 24 2 There is no doubt that such decisions by the police raise serious issues of concern. The use of police discretion in this way raises the spectre, recognized in a number of English cases, of a 'law of the mob', whereby peaceful, non-violent expression is restricted because of possible disruption or violence by counter-demonstrators.2 43 However, in situations involving large numbers of demonstrators, where there has been a history of serious violence to persons and property and where there is a real risk of further violence, the case against occasional outright bans may not be as compelling as Strossen and Neier would have us believe. It is clear from this analysis that many of the alleged restrictions on speech noted by Neier and Strossen are not the product of hate speech regulation. Arguably, they are not even examples of undue state regulation of free speech, unless Neier and Strossen are prepared to argue against any regulation of protest under any circumstances, no matter what the nature of the protest, where or when it takes place.2 " Ultimately, the only convincing way one can argue that incitement laws result in abuse is to cite evidence from the operation of those laws, not from unrelated provisions

#### That laws will be used against minorities is empirically denied and prevents reforms. Delgado and Yun ‘94

Richard Delgado - Charles Inglis Thomson Professor of Law, University of Colorado. J.D. 1974, University of California, Berkeley. David H. Yun – Member of the Colorado Bar. J.D. 1993, University of Colorado. “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview> JJN

B. The "Reverse Enforcement" Argument A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. 62 But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse. 63 Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with commission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive countries.67 The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.

#### Other countries show it won’t happen – our strong commitment to free speech hasn’t paid off either. The AFF is another empty promise. Delgado and Yun 95

Delgado, Richard [Charles Inglis Thomson Professor of Law, University of Colorado. J.D., University of California-Berkeley, 1974], and David Yun [Member of the Colorado Bar. J.D., University of Colorado, 1993.]. "Speech We Hate: First Amendment Totalism, the ACLU, and the Principle of Dialogic Politics, The." Ariz. St. LJ 27 (1995): 1281.

If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornog-raphy would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. n46 A host of indus-trialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda, n47 in many cases to comply with international treaties and conventions requiring such action. n48 Many of these countries traditionally respect free speech at least as much as the United States does. n49 No such na-tion has reported any erosion of the atmosphere of free speech or debate. n50¶ At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, n51 hounded Hollywood writers out of the country, n52 and harassed and badgered such civil rights leaders as Josephine Baker, n53 Paul Robeson, n54 and W. E. B. DuBois n55 in a campaign of personal and professional smears that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administra-tion have disparaged progressives to the point where many are now afraid to describe themselves [\*1291] as "liberals." n56 Controversial artists are denied federal funding. n57 Museum exhibits that depict the atomic bombing of Hiroshi-ma have been ordered modified. n58 If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. n59 Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. n60 If so, enacting hate speech rules may be evi-dence of a commitment to democratic dialogue, rather than the opposite, as some of its opponents maintain.

#### Even if codes were sometimes enforced against minorities it would be infinitely more harmful to allow whites to say whatever they want. Wilson 95

Wilson, John K. The myth of political correctness: the conservative attack on higher education. Durham, NC: Duke University Press, 1995.SP

This "fact" will come as a surprise to the black student punished at the University of Michigan for calling a white student 'white trash during an argument. Marcia Pally notes that "in the eighteen months that the University of Michigan applied its speech code, black students were accused of rotor speech in over twenty cases. Students were punished twice under the code's anti-racist provisions, both times for speech by or on behalf of blacks... Many opponents of speech codes, such as ACLU president Nadine Shoes., argue against them precisely because minorities, not whites, will be the ones punished: "These codes are enforced disproportionately against the very groups that think they're going to be protected by them'" While there is always a danger that college administrators may punish protected speech (as they have always done), abolishing all speech codes and leaving colleges with the intellectual equivalent of a Wild West shootout where any words—no matter how abusive and threatening—can be freely spoken is not the answer. Nor is the answer to go back to the old vague and arbitrary conduct codes, which are more dangerous than the worst of the much-maligned °speech coda." Instead, Colleges should adopt specific speech codes that regulate certain kinds of abusive speech and behavior—such as threats, harassment, and the mass theft of newspaper—without endangering the free oppression of offensive ideas.

### A2 Victimhood/Brown

#### The opposite is true – getting rid of speech codes treats racism as an individual problem. Delgado 91

Delgado, Richard[ Charles Inglis Thomson Professor of Law, University of Colorado School of Law. J.D. 1974, U-C Berkeley School of Law (Boalt Hall)]. . "Campus antiracism rules: Constitutional narratives in collision." Northwestern University Law Review 85.2 (1991).

As the analysis to this point has shown, neither the constitutional narrative of the first, nor of the thirteenth and fourteenth, amendments clearly prevails in connection with campus antiracism rules. Judges must choose. The dilem-ma is embedded in the nature of our system of law and politics: we want and fear both equality and liberty. n336 This Part offers a solution to the problem of campus antiracism rules based on a post-modern insight: the speech by which society "constructs" a stigma picture of minorities may be regulated consistently with the first amendment. n337 In-deed, regulation may be necessary for full effectuation of the values of equal personhood we hold equally dear.¶ The first step is recognizing that racism is, in almost all its aspects, a class harm -- the essence of which is subordi-nation of one people by another. The mechanism of this subordination is a complex, interlocking series of acts, some physical, some symbolic. Although the physical acts (like lynchings and cross burnings) are often the most striking, the symbolic [\*384] acts are the most insidious. By communicating and "constructing" a shared cultural image of the vic-tim group as inferior, n338 we enable ourselves to feel comfortable about the disparity in power and resources between ourselves and the stigmatized group. n339 Most civil rights law, of necessity, contributes to this stigmatization: the group is so vulnerable that it requires social help. n340 The shared picture also demobilizes the victims of discrimina-tion, particularly the young. Indeed, social scientists have seen evidence of self-hatred and rejection of their own identi-ty in children of color as early as age three. n341¶ The ubiquity and incessancy of harmful racial depiction are thus the source of its virulence. n342 Like water drip-ping on sandstone, it is a pervasive harm which only the most hardy can resist. Yet the prevailing first amendment par-adigm predisposes us to treat racist speech as an individual harm, as though we only had to evaluate the effect of a sin-gle drop of water. This approach -- corresponding to liberal, individualistic theories of self and society -- systematically misperceives the experience of racism for both victim and perpetrator. This mistake is natural, and corresponds to one aspect of our natures -- our individualistic selves. In this capacity, we want and need liberty. But we also exist in a social capacity; we need others to fulfill ourselves as beings. In this group aspect, we require inclusion, equality, and equal respect. n343 Constitutional narratives of equal protection and prohibition of slavery -- narratives that encourage us to form and embrace collectively and equal citizenship for all -- reflect this second aspect of our existence.¶ When the tacit consent of a group begins to coordinate the exercise of individual rights so as seriously to jeopardize participation by a smaller group, the "rights" nature of the first group's actions acquires a different character and dimen-sion. n344 The exercise of an individual right [\*385] now poses a group harm and must be weighed against this quali-tatively different type of threat. n345¶ First amendment scholar Kent Greenawalt's recent book n346 has made a cautious move in this direction. Alt-hough generally a defense of free speech in its individual aspect, his book also notes that speech is a primary means by which we construct reality. n347 Thus, a wealthy and well-regarded citizen who is victimized by a vicious defamation is able to recover in tort. His social "picture," in which he has a property interest, has been damaged, and will require laborious reconstruction. It would require only slight extension of Greenawalt's observation to provide protection from racial slurs and hate-speech. n348 Indeed, the rich man has the dominant "story" on his side; repairing the defamation's damage will be relatively easy.¶ Racist speech, by contrast, is not so readily repaired -- it separates the victim from the storytellers who alone have credibility. Not only does racist speech, by placing all the credibility with the dominant group, strengthen the dominant story, it also works to disempower minority groups by crippling the effectiveness of their speech in rebuttal. n349 This situation makes free speech a powerful asset to the dominant group, but a much less helpful one to subordinate groups -- a result at odds, certainly, [\*386] with marketplace theories of the first amendment. Unless society is able to deal with this incongruity, the thirteenth and fourteenth amendments and our complex system of civil rights statutes will be of little avail. At best, they will be able to obtain redress for episodic, blatant acts of individual prejudice and bigotry. This redress will do little to address the source of the problem: the speech that creates the stigma-picture that makes the acts hurtful in the first place, and that renders almost any other form of aid -- social or legal -- useless. B. Operationalizing the Insight¶ Could judges and legislators effectuate this Article's suggestion that speech which constructs a stigma-picture of a subordinate group stands on a different footing from sporadic speech aimed at persons who are not disempowered? It might be argued that all speech constructs the world to some extent, and that every speech act could prove offensive to someone. Traditionalists find modern art troublesome, Republicans detest left-wing speech, and some men hate speech that constructs a sex-neutral world. Yet race -- like gender and a few other characteristics -- is different; our entire his-tory and culture bespeak this difference. n350 Thus, judges easily could differentiate speech which subordinates blacks, for example, from that which disparages factory owners. Will they choose to do so? There is cause for doubt: low-grade racism benefits the status quo. n351 Moreover, our system's winners have a stake in liberal, marketplace interpre-tations of law and politics -- the seeming neutrality and meritocratic nature of such interpretations reassure the deci-sionmakers that their social position is deserved. n352

### A2 Chilling Effect

#### Any chilling effect is outweighed by costs hate speech does to minority students. Hate speech codes is less onerous than other options. Ma 95

Alice K. Ma [Harvard and Radcliffe Colleges; J.D. candidate 1995] “Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights” 83 Calif. L. Rev. 693 March 1995

At its worst, this chilling effect would silence speakers who did not use racial insults. Requiring innocent parties to bear part of the cost of a traditional affirmative action program is not by itself fatal to the program. As Chief Justice Burger noted about the set-aside scheme in Fullilove, "It is not a constitutional defect in this program that it may disappoint the expec [\*723] tations of nonminority firms. When effectuating a limited and properly tailored remedy to cure the effects of prior discrimination, such "a sharing of the burden' by innocent parties is not impermissible." 179 However, restricting the speech of innocent parties is more significant than denying them a contracting opportunity. The chilling effect of hate speech regulations raises serious First Amendment questions.¶ Nevertheless, vagueness and overbreadth concerns are not unique to hate speech codes and can be addressed through careful drafting. Professors Richard Delgado and David Yun argue that it is technically feasible to draft constitutional campus antiracism rules. 180 Delgado and Yun suggest that such rules could prohibit expressions of racial hatred and contempt directly, or they could regulate behavior currently actionable in tort. 181 Either approach would satisfy current constitutional requirements. According to Delgado and Yun, all we lack is the will. 182¶ If they are instituted, the benefit flowing from campus hate speech codes would reach not only the victims of hate speech, who would see justice done, but also the entire community, which would benefit from the deterrent effect. However, this added benefit would not increase the costs of a hate speech code. In situations involving conventional affirmative action programs, extending benefits to those who have not themselves suffered from discrimination causes concern because of the corresponding additional burden on innocent parties. In contrast, campus hate speech regulations would not exact an additional price for the added benefit accrued by nonvictims. Those who engage in hate speech would not be penalized more harshly in order to benefit the community since this benefit, the deterrent effect, is built into the sanction that would be imposed in any case.¶ Other issues related to who carries the burden of preference programs are inapplicable to the hate speech context. The Court's emphasis on flexibility, exemplified by a waiver of the preference where the burden on the [\*724] majority group would be unfair, 183 is meaningless since no disciplinary action would be taken unless one student racially insulted another. It is difficult to imagine what would excuse racist speech, but any extenuating circumstances could be taken into account by campus authorities.¶ The second and final question, whether the harm caused to minorities justifies the burden imposed on student perpetrators, is more intractable. Ostensibly, censoring a student who has called another a "nigger" - and deterring others from so indulging themselves in the future - is less onerous than being denied admission in the first place, which, realistically, is the result of all school affirmative action programs for some applicants. 184 Although the Davis plan was struck down in Bakke, racial minorities routinely receive special consideration at many colleges and universities. By comparison, preferential layoff schemes like the one in Wygant do not survive strict scrutiny because they impose too heavy a burden on the innocent. However, being prevented from using racial insults seems less drastic to an individual than losing one's job. It is likely that most people consider their job more important than their freedom to insult people of color. This choice seems particularly clear when one considers that the burden imposed on perpetrators would be minimal. A narrowly drafted speech code would not proscribe, for example, non-intimidating speech on the subject of race and ethnicity in a neutral forum. On an individual level, therefore, hate speech codes do not impose a disproportionate burden.

#### The idea that speech coeds spill over or chill speech is all hype – most students have never seen someone punished for expressing opinions . Posner 16

Posner, Eric. (Eric Posner is Kirkland and Ellis Distinguished Service Professor of Law and Arthur and Esther Kane Research Chair at the University of Chicago. His current research interests are international law and constitutional law) "Campus Free Speech Problems Are Less Than Meets the Eye." Cato Unbound . January 18, 2016. https://www.cato-unbound.org/2016/01/08/eric-posner/campus-free-speech-problems-are-less-meets-eye.SP

I don’t like political correctness any more than Greg Lukianoff does, but he exaggerates the problem and unfairly blames universities when the problem really lies with students. There are 5,300 colleges and universities in the United States. They educate approximately 20 million students every year. It is hardly surprising that campus administrators who enforce the rules blunder from time to time. In most of Lukianoff’s examples, the student (or professor, in one case) engaged in speech that was on the margin of other activities that are appropriately regulated, such as distributing leaflets and threatening students or faculty. The universities overreacted, but errors are unavoidable. He does not cite an example of a university punishing a student for merely expressing a view that people regard as offensive—Holocaust denial, or white supremacy, or criticism of Muslims, or opposition to affirmative action, or whatever. Moreover, nearly all of Lukianoff’s examples of quasi-censorship take place outside of the university’s core education and research mission. We’re talking about students complaining about how they are treated outside of class, not in it, often at the hands of other students or student organizations. As a law professor, I teach students who are graduates of colleges all around the country. I’ve taken to quizzing them about political correctness and censorship in their colleges. None of them have recounted classmates being punished by administrators for expressing their views. None of them have said that they refrained from expressing a view because of fears that the university would punish them. The few anecdotes I have heard from my students are, like Lukianoff’s, borderline cases where a student expresses views in a way that may threaten campus order, safety, and security. (One such example involved a student who made a bonfire of his books—apparently to express his sentiments about his education, but in a way that understandably caused concern to administrators.) The major threat to free discussion on campus is the ideological conformity of students—who are afraid of losing friends and being hassled by peers if they express ideologically idiosyncratic views—and not university administrators, who are mostly passive and remote. While it is true that most universities have speech codes, these codes are designed not to stifle but to enhance discussion by discouraging students from being rude to each other. One of the oddities of the American university is that students are expected to live together and not just attend classes together. Universities’ understandable but obsessive genuflection to the god of diversity means that students of radically different backgrounds and attitudes are thrown together. The idea is that they are supposed to learn from each other; the reality is that everyone must constantly be on his guard because it is so easy to inadvertently offend someone from a different background by innocently expressing one’s opinion. While Lukianoff and I can retreat from the public square to the privacy of our homes if we find public debate offensive, students who live in dorms have no such option. This is why students so frequently self-segregate by joining fraternities and clubs, and by moving off campus when allowed to. In this way, they act no differently from most Americans who self-segregate by moving to homogenous neighborhoods. But self-segregation within the university can go only so far, and this is why universities insist on the authority to punish students who “harass” each other—meaning who fail to be reasonably polite to each other. This is regulation of manners, not of speech or opinion—in the spirit of time, place, and manner regulations that governments are permitted to impose even under the strict doctrines of First Amendment law. University speech codes (at least, in private universities) go farther because campus life is different from public life. If a white student insists on telling his black roommate that affirmative action is wrong, I doubt any administrator would consider this a violation of speech codes. If instead he calls his roommate racial epithets, I suspect the university would intervene. I don’t know whether Lukianoff would regard this as a violation of the white student’s freedom of speech, but it would be ridiculous to require the black student to tolerate this boorish behavior.

### A2 White Saviorism/Humanism K

#### Permitting racist expressions puts faith in the marketplace of ideas that whitewashes history and reifies the abstract liberalism that they critique. Moore and Bell 17

Wendy Leo Moore and Joyce M. Bell [Texas A&M, University of Minnesota] "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).

The practical result is a post–civil rights constitutional right to be racist in colleges and universities that administrators may not restrict in any meaningful way.11 The legal result is that whites can invoke state-centered protection for their racist speech and expression on college and university campuses, whereas students of color have no right to attain higher education free from dehumanizing, oppressive, and tacitly threatening communications. The broader outcome is that US courts have created an interinstitutional symbiosis that reifies color-blind racism and white institutional space. In creating a state protection for explicit racist expression on college and university campuses, the courts protect a powerful mechanism of white institutional space, ensuring that administrative discourse rebuking such racist activities never goes beyond rhetoric.¶ The Supreme Court’s assertion concerning the necessity of free speech absolutism in democratic society is dishonest. The Court’s previous allowance of legal restrictions on forms of speech (such as fighting words, obscenity, child pornography, and certain instances of fraudulent or libelous speech) illustrates that when a social value is considered important enough, content- based speech restrictions have been and continue to be permitted. Moreover, many other democratic countries in the world that constitutionally protect and respect freedom of speech and expression do, in fact, prohibit some forms of racist and ethnocentric expression. These restrictions have historically been based precisely on the kinds of structural connections between such expression and the histories of racial violence and oppression discussed above herein. In fact, after World War II, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, obligating signatories to create sanctions for “direct and public incitement to commit genocide” (see Tsesis 2010: 645). With the lessons ￼of World War II revealing startling connections between rhetorical manipulation and racial/ethnic genocide, many democratic nations responded by enacting criminal and civil penalties for certain forms of expressions of racial/ethnic animus and incitement. For example, the Canadian Supreme Court has prohibited hate speech, noting that the purpose of protections for free speech include “(1) seeking the truth and the common good, (2) promoting self- fulfillment of individuals by allowing them to develop thoughts and ideas as they see fit, and (3) ensuring that the political process is open to all persons” (quoted in Tsesis 2010, 647). Noting that racial/ethnic hate speech is not compatible with these goals, the Canadian Supreme Court has permitted “reasonable” limitations on such forms of speech (Tsesis 2010). In addition, the United Kingdom, Germany, France, and many other Western democracies permit criminal and civil penalties for racist and ethnocentric speech, including speech that creates hatred for an entire race/ethnicity, incites violence, or argues for the mass oppression of racial and ethnic groups (Tsesis 2010; Delgado and Stefancic 2004; Matsuda et al. 1993). Moreover, in Canada, the United Kingdom, and Germany, government policies have been created with special regard to such forms of hate speech on college and university campuses to prevent racist and xenophobic ideologies from “taking root” in these settings (Tsesis 2010, 646).¶ In the United States, however, the courts have prohibited such government interventions with regard to racist expression. Thus, while administrators may engage in a discursive disavowal of explicit and overt racism on campus, they must acknowledge (either publicly or in the privacy of administrative meetings) that they are, in fact, legally required to tolerate racist expression from the campus community. ￼The legal initiatives and changes resulting from the civil rights movement of the 1950s and 1960s were thought to have created equality of opportunity for access to institutions such as colleges and universities. The Fourteenth Amendment to the Constitution, which requires equal protection of the law, and the 1964 Civil Rights Act, which in Title VI requires that public educational institutions not permit racial discrimination, should guarantee people of color the right to participate meaningfully in US colleges and universities. Unfortunately, throughout the post–civil rights era, this meaningful participation has been thwarted by invidious racist activities in these institutions. Instead we see continued examples of expressions and activities that evoke a history of racial oppression, violence, and terrorism, reifying the boundaries of white institutional space and functioning to limit the meaningful participation of people of color. Powerful activists, such as the members of FIRE, have fought for legal protections for those who engage in such racism, and the US courts have codified a color-blind racist discourse protecting the rights of racist speakers over the rights of people of color in colleges and universities.¶ Our data demonstrate an ironic deployment of the dominant discourse of color-blind abstract liberalism as a mechanism for protecting explicitly racist expression through the deployment of the First Amendment protection of freedom of speech and expression. College and university administrators engage in a neo-liberal marketplace of ideas philosophy framed by a First Amendment absolutist rhetoric that fails to meaningfully recognize the historical racist context of these expressions and activities. As our analysis reveals, the notion of a counter- speech response to racist expressions is problematic and ineffective because the symbols of racist violence in this country attach to a history of white domination, and there exists no parallel racially equitable context that can be as easily referenced through public expressions. Moreover, institutional responses to explicitly racist incidents function to camouflage the more covert, ￼deeply embedded institutional practices that privilege white institutional power and tend to reproduce unequal white access to the material benefits accruing from these institutions. This research reveals an important symbiotic connection between explicitly hostile racist expression on college and university campuses and the more subtle color-blind racism typical of the post– civil rights era. In doing so we have extended the theoretical work on color-blind racism to facilitate an explanation for the continued significance of traditional Jim Crow racism on college and university campuses and, just as importantly, to illustrate one mechanism by which the boundaries of white institutional space are protected and reproduced in institutions of higher education More importantly, we believe that this research indicates that a meaningful analysis of equal access to higher education in this country calls for an interinstitutional examination of racist expression and its connection to racial violence and oppression. As we note, many other democracies that value and privilege the right of freedom of expression and speech have also placed limits on particular forms of racist and xenophobic speech because they see a clear connection between un-checked racist speech and the societal institution of racist policies. Institutions of higher education seem to be a logical space in which to begin a project that (1) interrogates the right of free speech in the context of connections between speech and expression and social context and structure, critically examining the neoliberal notion of a marketplace of ideas in which all ideas have equal weight and (2) exposes the neoliberal legal logic of First Amendment absolutism in the context of the actual substantive harm done to students of color at historically white institutions of higher education. While there is not space in this piece to delineate the parameters of a racially equitable construction of the First Amendment in relationship to racist speech and expression on college and university campuses, we have ￼provided a structurally contextualized analysis of these forms of expression as well as some examples of policies and laws in other social democracies that we view to be more thoughtful than current US law and policy. We hope that analyses such as ours will spark new debates and lead to policies that will bring about more racially equitable college and university campuses in this country.

#### Hate speech codes are necessary for black survival – they’re directly supported by oppressed groups. Garrett 02

Deanna M. Garrett, Silenced Voices: Hate Speech Codes on Campus, University of Vermont, <https://www.uvm.edu/~vtconn/?Page=v20/garrett.html>, 2002

One useful approach to the hate speech debate is critical race theory. "Critical race theory is grounded in the particulars of a social reality that is defined by our experiences and the collective historical experience of our communities of origin" (Lawrence, Matsuda, Delgado, & Crenshaw, 1993, p. 3). It emerged in opposition to the concepts of race and racism held by the dominant paradigm; it comes from those who are oppressed. Critical race theory acknowledges the historical context of racism and its effect on oppressed groups. This history and therefore the meanings of race and racism are socially constructed. Certain hateful messages derive their power from this historical and cultural context (Lawrence et al.). In effect, hate speech silences and oppresses the targeted groups. To counter this silence, critical race theory seeks to create space and opportunities for silenced voices (Lawrence et al.). Conclusions The question still remains: what are the implications of hate speech codes for colleges and universities and what legal recourse can institutions take against students who engage in hateful speech? Neiger, Palmer, Penney, and Gehring (1998) outline four forms of hate speech which can be regulated by colleges and universities: first, institutions may limit any speech which constitutes "fighting words" as defined by the R.A.V. v. City of St. Paul court case; second, colleges and universities may limit speech on the basis of time, place, and manner; third, they may prohibit demonstrations which disrupt normal activity or infringe on the rights of others; and finally, institutions may restrict behavior that "threatens individuals’ personal safety, academic efforts, employment, or participation in university activities" (p. 203). In addition, the Supreme Court ruled in Wisconsin v. Mitchell that colleges and universities may enhance sanctions for behavior that intentionally targets individuals as a result of bias (Neiger et al.). Because of the complexities surrounding the topic of hate speech codes on college and university campuses, only a small portion of the issues could be explored in this paper. Because codes can be written to control hate speech indirectly, student affairs professionals should remain sensitive to the experiences of students victimized by hate speech. Furthermore, the student affairs practitioner must be cognizant of the courts’ interpretation of hate speech codes and work to protect and maintain the integrity of everyone on campus. It is important to recognize that hate speech codes will not solve the problem of racist, sexist, homophobic, and other hateful speech on campus. They will, however, begin to address the problem.

#### Strategic endorsement of the state doesn’t endorse the entire structure. Myers 13

Ella MYERS Poli Sci & Gender Studies @ Utah ’13 Worldly Ethics: Democratic Politics and Care for the World p. 148-151

Finally, another critical connection concerns not the linkages between diverse ethical practices of care, but the relationship between ethos and institutions. The very question of a democratic ethos presupposes that the spirit of a regime, not only its formal features. matters. The argument presented here bas defended a specific spirit, one characterized by care for the world as world, as being highly important to and enlivening of associative democracy. Moreover, as I showed in chapter 4, this ethos is already present ill some forms of democratic organizing today, though it deserves to be more explicitly elaborated and purposefully pursued. But one may still wonder how this ethical sensibility can be sustained, much less extended, when so many features of contemporary politics in the United States seem inhospitable, if not hostile, to democratic action that embodies care for the world. Official channels of government offer few opportunities for ordinary citizens to gather for the purpose of discussing and deciding public matters, while associational activities that take place outside of the state apparatus are continually threatened by vigilant policing practices.26 Corporate power continues to grow, exerting ever more influence on supposedly democratic institutions. And the dominant rhetoric of mass-mediated electoral politics in this countryappeals persistently to citizens' self-interest, doing little to bring into view the public world as common object or to cultivate a sense of concern for this entity. How might worldly ethics find expression, here and now? Such an ethics would seem to depend largely on the existence of institutional spaces and practices that allow democratic actors to assume and enact collective responsibility. Doesn't an ethics oriented toward care of the world require political structures that foster such care and afford opportunities for its exercise? Yet don't the very institutions that might serve to cultivate care of the world depend on such an ethics already being in existence if they are to come into being? We are in the midst of a powerful paradox famously identified by JeanJacques Rousseau in The Social Contract. Rousseau's theorization of politi- cal founding stresses the extent to which ethics and institutions arc mutually dependent upon one another; each one seems to presuppose the other as its condition of possibility. The establishment of a sound democratic system of ,self-rule, Rousseau explains. seems to require individuals who exhibit a "social spirit" already oriented toward the common good. Yet that orientation would itself seem to be the result of democratic organization: "For a newly formed people to understand the wise principles of politics and to follow the basic rules of statecraft, the effect would have to become the cause; the social spirit which mLlst be the product of social institutions would have to preside over the setting up of those institutions; men would have to have already become before the advent of law that which they become as a result of the law."27 Does this bind admit of an escape? Translated into the terms of this project, if an ethics of care for the world might help to inspire and strengthen associative democratic politics, doesn't such an ethics also emerge in and through that very politics? Where does this leave us? Although Rousseau's paradox, I would argue, cannot be resolved, it can be attenuated. The impasse he describes, while genuine, rarely if ever contronts us so starkly. The mutual dependence of ethics and institutions colors every creative political act, every attempt to begin anew, but it is not the fatal trap Rousseau's rendering might imply. We are not in the position of performing a political founding ex nihilo. The situation evoked by Rousseau gains much of its drama from the fact that it is depicted as one in which new laws, practices, and procedures must be invented from scratch, in the absence of any preexisting supports, whether ethical or institutional. We, thankfully or not, do not live in such a vacuum. Finding ourselves in the midst of things means we can do more than wish for a Rousseauvian Legislator who will sct things in motion for us 28 In medias res, Rousseau's riddle loosens its grip a hit. For we do not face an empty political landscape that forces us to make an impossible choice between ethics and institutions. Even if it is a minority feature of contemporary politics in the United States, we nonetheless can find worldly ethics already expressed in institutional life. It is evident in the Beacons Programs, No Mas Muertes jNo More Deaths, and the Right to the City organizations and projects (see chapter 4). Efforts to care for the world as world -to make the world a more hospitable place for all human beings and to promote democratic practices tbrougb which the world can emerge as an in-between-are already happening. One can locate this spirit, for example, in the work of United for a Fair Economy, a national organization that raises awareness of the harms of concentrated wealth and power, especially in relation to the racial wealth divide, and advocates progressive taxation policies. It does so largely through community-based "participatory education" in English and Spanish, which helps to create "popular educators" who can help foster democratic mobilization on behalf of economic justice.29 Justice Now, based in California (home to the two largest women's prisons in the world), works to improve the conditions faced by women in prison, documenting and challenging human rights abuses against inmates, especially sexual abuse and the denial of health care.3D At the same time they aim to improve prisoners' lives in the present, the group promotes alternatives to policing and prisons, working toward a long-term goal of the abolition of prisons. The organization works with women inmates rather than simply providing services for them: "It's imperative that the prisoners themselves drive the agenda."31 By cultivating leadership and activism among inmates, who serve on the group's board and steer policy and strategy, Justice Now strives not only to address prisoners' basic needs but also to create new avenues for political participation for some of society's most disenfranchised members. Our Water Commons, based in Minneapolis, is an activist organization working to bring about "participatory, democratic, community-centered systems" of water distribution worldwide. In cooperation with other global water justice movements, many of which have successfully challenged governmental privatization efforts, participants advocate the principle that water is a "commons that belongs to everyone and no one." They seek legal reform that Simultaneously provides greater control of water by local citizens while strengthening the limits on privatization, pricing, and use, in recognition not only of a human right to water but also of the importance of fair water distribution for the ecosystems of which all humans are a part.32 In these cases and many others, the ethical and the institutional cannot be detached from one another; care for the world as both a home and an in-between is enacted in and through democratic counter-institutions.33 They are already imperfectly combined. Whether we join in the activities of these organizations or take inspiration from them to create new ventures, we are far from the abstract, empty space of Rousseauvian political beginnings. That we are already located within a messy universe of ethical-institutional entities means we do not need to imagine the task before us as one of radical invention, confronting us with an irresolvable riddle: ethics or institutions? We are in the middle of things, and this might turn out to be a good place to be. While collaborative efforts to care for the world may be muted features of contemporary political life, they nonetheless exist. It is surely easier to lament or despair over present conditions, but a commitment to associative democratic politics calls for something else. It requires us to take sustenance from the supports that already exist, so that we might begin where we are.

#### Using the state strategically is key to material gains for blacks and building support for a large-scale revolutionary movement. Bloom and Martin 13

(Joshua, Dean's Fellow in Social Research @ UCLA, and Waldo E., Alexander F. & May T. Morrison Professorship of American History & Citizenship @ UC Berkeley, [he’s black], Black against Empire: The History and Politics of the Black Panther Party)

There is no movement like the Panthers in the United States today because the political context is so different from that in the late 1960s. This is not to say that the core grievances around which the Panthers mobilized have disappeared. To the contrary, large segments of the black population continue to live impoverished in ghettos, subject to containment policing, and send more sons to prison than to college. Many young people in these neighborhoods might well embrace a revolutionary political practice today if it could be sustained. But crucially, the conditions for rallying potential allies have changed. The black middle class has greatly expanded since the Panthers’ heyday. Its sons and daughters have access to the nation’s elite colleges and universities. Black public sector employment has expanded dramatically: city governments and municipal police and ﬁre departments hire many blacks. Blacks have won and institutionalized electoral power both locally and nationally. Most blacks in the United States today, especially the black middle class, believe their grievances can be redressed through traditional political and economic channels. Most view insurgency as no longer necessary and do not feel threatened by state repression of insurgent challengers. No less important, the United States has no military draft today, and no draft resistance. The wars in Iraq and Afghanistan may be unpopular, but few people will risk years in jail to oppose them. No New Left exists today to embrace a Black Panther Party as its vanguard. Internationally, the struggles for national independence have almost all been won: the vast majority of the world’s population is no longer colonized, if not yet truly free. Today, with few potential allies for a revolutionary black organization, the state could easily repress any Panther-like organization, no matter how disciplined and organized. The broader question is why no revolutionary movement of any kind exists in the United States today. To untangle this question, we need to consider what makes a movement revolutionary. Here, the writings of the Italian theorist and revolutionary Antonio Gramsci are instructive: “A theory is ‘revolutionary’ precisely to the extent that it is an element of conscious separation and distinction into two camps and is a peak inaccessible to the enemy camp.” In other words, a revolutionary theory splits the world in two. It says that the people in power and the institutions they manage are the cause of oppression and injustice. A revolutionary theory purports to explain how to overcome those iniquities. It claims that oppression is inherent in the dominant social institutions. Further, it asserts that nothing can be done from within the dominant social institutions to rectify the problem—that the dominant social institutions must be over- thrown. In this sense, any revolutionary theory consciously separates the world into two camps: those who seek to reproduce the existing social arrangements and those who seek to overthrow them. In this ﬁrst, ideational sense, many insurgent revolutionary movements do exist in the United States today, albeit on a very small scale. From sectarian socialist groups to nationalist separatists, these revolutionary minimovements have two things in common: a theory that calls for destroying the existing social world and advances an alternative trajectory; and cadres of members who have dedicated their lives to advance this alternative, see the revolutionary community as their moral reference point, and see themselves as categorically different from everyone who does not. More broadly, in Gramsci’s view, a movement is revolutionary politically to the extent that it poses an effective challenge. He suggests that such a revolutionary movement must ﬁrst be creative rather than arbitrary. It must seize the political imagination and offer credible proposals to address the grievances of large segments of the population, creating a “concrete phantasy which acts on a dispersed and shattered people to arouse and organise its collective will.” 18 But when a movement succeeds in this task, the dominant political coalition usually defeats the challenge through the twin means of repression and concession. The ruling alliance does not simply crush political challenges directly through the coercive power of the state but makes concessions that reconsolidate its political power without undermining its basic interests.” A revolutionary movement becomes signiﬁcant politically only when it is able to win the loyalty of allies, articulating a broader insurgency.” In this second, political sense, there are no revolutionary movements in the United States today. The country has seen moments of large-scale popular mobilization, and some of these recent movements, such as the mass mobilizations for immigrant rights in 2006, have been “creative,” seizing the imagination of large segments of the population. One would think that the 2008 housing collapse, economic recession, subsequent insolvency of local governments, and bailout of the wealthy institutions and individuals most responsible for creating the ﬁnancial crisis at the expense of almost everyone else provide fertile conditions for a broad insurgent politics. But as of this writing, it is an open question whether a broad, let alone revolutionary, challenge will develop. Recent movements have not sustained insurgency, advanced a revolutionary vision, or articulated a broader alliance to challenge established political power. In our assessment, for the years 1968 to 1970, the Black Panther Party was revolutionary in Gramsci’s sense, both ideationally and politically. Ideationally, young Panthers dedicated their lives to the revolution because—as part of a global revolution against empire—they believed that they could transform the world. The revolutionary vision of the Party became the moral center of the Panther community. To stand on the sidelines or die an enemy of the Panther revolution was to be “lighter than a feather”—to be on the wrong side of history. To die for the Panther revolution was to be “heavier than a mountain”—to be the vanguard of the future.21 The Black Panther Party stood out from countless politically insigniﬁcant revolutionary cadres because it was creative politically. For a few years, the Party seized the political imagination of a large constituency of young black people. Even more, it articulated this revolutionary movement of young blacks to a broader oppositional movement, drawing allied support from more moderate blacks and opponents of the Vietnam War of every race. When expanding political and economic opportunities for blacks and the growing consensus among mainstream politicians to wind down the Vietnam War opened institutionalized channels for redressing the interests of key Panther supporters, Panther practices lost their political salience. When the political foundation of the Black Panther Party collapsed in early 1971, the practices that had won the Panthers so much inﬂuence became futile. No Panther faction was able to effectively reinvent itself. Even as concessions siphoned off allied support, the state sought to vilify the Party, driving a wedge between Panthers and their allies. Ultimately, nothing did more to vilify the Panthers than the widely publicized evidence of intraorganizational violence and corruption as the Party unraveled. Any attempt to replicate the earlier Panther revolutionary nationalism was now vulnerable to provocation and viliﬁcation. The political “system” had been inoculated against the Panthers’ politics.22 While minimovements with revolutionary ideologies abound, there is no politically signiﬁcant revolutionary movement in the United States today because no cadre of revolutionaries has developed ideas and practices that credibly advance the interests of a large segment of the people. Members of revolutionary sects can hawk their newspapers and proselytize on college campuses until they are blue in the face, but they remain politically irrelevant. Islamist insurgencies, with deep political roots abroad, are politically signiﬁcant, but they lack potential constituencies in the United States. And ironically, at least in the terrorist variant, they tend to reinforce rather than challenge state power domestically because their practices threaten—rather than build common cause with—alienated constituencies within the United States. No revolutionary movement of political signiﬁcance will gain a foothold in the United States again until a group of revolutionaries develops insurgent practices that seize the political imagination of a large segment of the people and successively draw support from other constituencies, creating a broad insurgent alliance that is difficult to repress or appease. This has not happened in the United States since the heyday of the Black Panther Party and may not happen again for a very long time.

#### Using the state doesn’t ethically legitimate it – the state is inevitably a unit of analysis given that it exists now even if we want to move beyond it. Frost 96

Mervyn Frost, U of Kent, 1996, Ethics in Int’l Relations, p. 90-1. NS

A first objection which seems inherent in Donelan’s approach is that utilizing the modern state domain of discourse in effect sanctifies the state: it assumes that people will always live in states and that it is not possible within such a language to consider alternatives to the system. This objection is not well founded, by having recourse to the ordinary language of international relations I am not thereby committed to argue that the state system as it exists is the best mode of human political organization or that people ought always to live in states as we know them. As I have said, my argument is that whatever proposals for piecemeal or large-scale reform of the state system are made, they must of necessity be made in the language of the modern state. Whatever proposals are made, whether in justification or in criticism of the state system, will have to make use of concepts which are at present part and parcel of the theory of states. Thus,for example. any proposal for a new global institutional arrangement superseding the state system will itself have to be justified, and that justification will have to include within it reference to a new and good form of individual citizenship, reference to a new legislative machinery equipped with satisfactory checks and balances, reference to satisfactory law enforcement procedures, reference to a satisfactory arrangement for distributing the goods produced in the world, and so on. All of these notions are notions which have been developed and finely honed within the theory of the modern state. It is not possible to imagine a justification of a new world order succeeding which used, for example, feudal, or traditional/tribal, discourse. More generally there is no worldwide language of political morality which is not completely shot through with state-related notions such as citizenship, rights under law, representative government and so on.

### A2 Slippery Slope

#### Turn – minorities already can’t speak out because they get shouted down and threaten because of universal free speech AND the right to be free from hate outweighs the right to be hateful. Cohen 15

Tanya Cohen, Here Is Why It’s Time To Get Tough On Hate Speech In America, Thought Catalog, January 5, 2015 EE

Minorities already face widespread discrimination in our society. America’s Orwellian notion of “freedom of speech” as protecting hateful speech is even more abhorrent when you consider how the voices of minorities are persistently marginalized and how they are routinely denied a voice while the rich and powerful are allowed to demean and dehumanize minorities under the guise of “free speech”. How are vulnerable minorities expected to speak up about the injustices that they face when they are always shouted down by the hateful voices of the rich and powerful? Hate speech is not “freedom” to people of color who face constant racist abuse, transgender people who receive non-stop harassment and misgendering, or women visiting abortion clinics who get heckled and called murderers. Not to mention, the right of minorities to NOT be exposed to hate speech is infinitely more important than the so-called “right” of bigots to spew hate speech at minorities. Freedom of speech is extremely important, but so are basic human rights and human decency.

#### There are institutional checks to their claims. O’Loughlin 15

Bridget O’Loughlin, Campaign Coordinator of the No Hate Speech Movement for the Council of Europe, Where should the limits to freedom of speech be set?, 04/06/2015, debateingeurope.eu EE

I think this is an extremely pertinent question, and it’s certainly one that many people have been grappling with for some time now… Clearly, you have to be very, very careful because repressive governments have been known to use issues like hate speech to shut down social media and websites without just cause… This is something we need to guard against, and is why we need to look to instruments like the European Convention on Human Rights, and the way it’s been interpreted by the European Court of Human Rights, which has a lot of jurisprudence, a lot of case law, on the limits to freedom of speech in terms of hate speech, or incitement to criminal action or racism, etc. As soon as you’re speaking or writing in the public domain – be that speaking on a soap box in the street corner, or writing an article in a newspaper, or writing a blog which is sent out to millions of people on the internet – you’re in a public area and there have to be some limits on what you are or are not allowed to say… But, clearly, we also have to protect freedom of speech and not let this fight against hate speech be used as an excuse, which I think it is sometimes, to limit freedom of expression.

#### The slippery slope argument is non-sense, history and basic logic are on our side. Muravchik 10

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Moreover, a wealth of political history suggests that the slippery slope is a phantom. Almost all European countries ban “hate speech” and many ban Holocaust-denial. This goes against the American grain, but those countries have not sacrificed any other freedoms as a result. Or consider West Germany. The Americans and Germans who framed the Basic Law of the Bonn Republic worked in the terrible shadow of Hitler’s destruction of the Weimar Republic, Germany’s only prior democratic experiment. They were also in uncomfortable proximity to Soviet-run East Germany. So they banned both the Nazi and Communist Parties on the grounds that they were totalitarian movements, aiming to destroy democracy itself. Far from turning into a slippery slope, under this system freedom took hold in Germany at long last and apparently forever. What about America’s experience? The ambit of tolerated speech has grown relentlessly wider. In the realm of obscenity standards, we have gone from Lady Chatterly, to bare breasts, to full frontal, to pictorial gynecology. If there is any slippery slope, it seems to be tilted in the opposite direction from the one invoked by conventional wisdom. Were the court to uphold some constraints on speech, that would merely put us back to some earlier point in the unfolding of American free speech standards. When we were at that point, whatever and whenever it was, we did not slide downward to dictatorship but forward to where we stand today. Where is the danger? I can think of no example in which rights disappeared down a slippery slope. Yes, the Communists used “salami tactics” in subjugating Eastern Europe, but the progressive loss of freedom was scarcely unforeseen. The Kremlin was bent on imposing its model of totalitarianism one way or another on the countries its troops occupied; the salami slices merely made the going smoother. The slippery slope peril is a myth, much like the libertarian bogeyman that the welfare state will lead to dictatorship. In practice, European and other countries have infringed economic freedom without any loss of political freedoms. And they have also constrained speech in ways that most Americans (including me) wouldn’t do but with no further loss of freedom. A sovereign, self-governing people is capable of drawing lines. To argue by imagery and analogy, as does the conventional wisdom apotheosized by the Times, rather than by logic and history, is, you might say, to step onto a slippery slope at the bottom of which lies lots of freedom of thought but very little thinking.

### AT: Malik

#### Malik wrong- words and acts are tied- human nature

Bobbie 14

(commenter on the article, https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/)

Your arguements are critically flawed and similar words come from the mouth of many individuals full of hate. Firstly, “It is a way of making certain ideas illegitimate without bothering politically to challenge them”. “Hence I am wary of the argument that some sentiments are so immoral they can simply be condemned without being contested.” I agree, but i would say that only you have not thought nor contetested their morality. It is supremely arrogant to think that in past history no one has thought of the morality of hate speech and freedom of speech. Do you think that these laws have just come about out of no where and with no thought? You fail to realise, or choose not to realise that these laws are a consequence of thousands of years of actions and introspection into the cause of conflict, yet you use examples of history to justify their absence. These laws are not here to remove your freedom of speech but rather to keep the status quo of a civilised society and protect your freedoms. You may be short sighted enough to believe that these laws are uncontested and have come about as if sprouted from the ground with just the addition of a little bit of water. It is convenient to forget the seed beneath the ground, how it was placed there and how the soil has come to contain nutrients to see the plant grow. People who are capable of hind sight are capable of seeing the consequences of hate speech and the violence it leads to. Why does it lead to violence? It’s human nature, a concept freedom of speech does not take into account. There cannot be true freedom with out restrictions. Allowing freedom to verbally and categorically discriminate in terms of hate leads people to question the value of freedom. I know people like you, you argue that freedom of speech should be unrestricted or at the very least have limited restriction without giving thought to the violence that arises from it. Oh yes, i can hear the cogs in your mind ticking over, click, click, click but violence is a step too far you say!. Yet do you come up with a solution to prevent the violence that will result? No, you give no thought to that, you only give thought to how you can shoot your mouth off and insult others then ask for the very law that did not protect them to protect you from violence. Violence that you more than happily project on others. It is, and i apolgise for saying so, cowardly. How would you prevent, as seen in instances where you described to prevent hatred from infecting society and seeping into the public sector and people using it to discriminate? Are you so naive to think that it will not happen? or, this is what i think is more likely, you simply do not care as long as you have your “freedom of speech”. Why do i think that? because you do not put forward any arguments that will prevent this from happening. These laws are in place to prevent violence, yet you advocate an ideology that will result in violence. You ignore human nature so you can speak with out consequence.

### AT: Malik- Democracy

#### Hate speech, not censorship, is the bigger threat to democracy

Bobbie 14

(commenter on the article, https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/)

“Without free speech there is no democracy.” This is absurd, democracy existed before these laws, and democracy still exists after these laws. Its funny that the Freedom of speechers put forward a version of democracy which allows them more freedom of than others. Democracy is having the vote for a political party. Removal of that is the death of democracy, not some person not being allowed to shout profanities in the street. Democracy and the current laws allow for the equal (as close as we can get) right for people to worship and practice belief as they wish. So, saying that. You have the right to say what you want in the privacy of your own home. You DO NOT have the right to spew forth hate speech on others. See the difference?? You have the freedom to practice and say what you wish within the confines of your own personal space. You do not have the right to invade the personal space of others. That is where the clear difference lays. That is where your intentions lay, that is why your agenda to allow the subjugation of others becomes apparent. We live in a democracy, where people are free to live as they wish without persecution, intimidation and fear of discrimination.

### AT: Malik- Must Refute offensive arguments

#### Bad arguments are defeated by common sense, don’t need detailed response

Bobbie 14

(commenter on the article, https://kenanmalik.wordpress.com/2012/04/19/why-hate-speech-should-not-be-banned/)

As for the comments on Watson. “But most of those who condemned him did not bother challenging the arguments, empirically or politically.” Most people would people scoff at rediculous arguments when its obvious that the statement is based in prejudice. If someone calls me a dickhead, i am not going to take pictures of my forehead to emperically deny that i have a penis on my head. Its scoffed at with suitable response. Most people are smart enough to see a rediculous statement and not feel the need to spend day and hour trying to refute an idea that is undeniably wrong, to paint this as ignorance on behalf of the respondants is disingenuous. “Simply to dismiss Watson’s claim as beyond the bounds of reasonable debate is to refuse to confront the actual arguments, to decline to engage with an idea that clearly has considerable purchase, and therefore to do disservice to democracy” Once again, do i need to send you a picture of my face to prove to you that there is indeed no penis attached to it? Will my forehead be the saviour of democracy? Its stunning, if you were not to ignore history you would see that hate speech is only used to control others,intimidate and to take away their freedom. Hate speech has no place in a civilised society and will only lead to the downfall of democracy, as seen in EVERY example of its use through out history, it serves no purpose other than the exhalation of air.

### AT: Counter Speech

#### Counter speech works vs a small subset of racists but is used to justify all hate speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

When we turn to public figures invited to speak about controversial topics, we must distinguish between racist persuaders and violent racist intimidators. People like Arthur Jensen, Richard Herrnstein, and Charles Murray, who propagate offensive racist myths under the guise of social science, are racist persuaders. Their pronouncements take place entirely within the realm of discourse, to which opponents can respond through rational discussion and careful refutation. Other free speech rights, including the venerable traditions of picketing and heckling, stop short of using force to stop figures like these from speaking. Even the sharpest ideological struggle abides by implicit rules that social movements have occasionally violated when they have replaced persuasion with the use of force. This not only violates the speakers’ fundamental rights, but is also bad strategy. Protests ignoring the right to free speech alienate both the audience attending the event, whom protesters should be trying to win over, and those who wish to preserve free speech. This differs from racist or antisemitic acts of intimidation perpetrated by organized groups with a history of physical violence. The 1936 march organized by the British Union of Fascists in the Jewish-majority East End of London illustrates this distinction. Oswald Mosley, the demonstration’s leader, did not intend to persuade the Jews living in that neighborhood to join their group. Rather, he wanted to terrify them. Nor did the American neo-Nazi group that applied for a march permit in the also heavily Jewish Chicago suburb of Skokie in 1978 set out to convert the residents, many of whom were Holocaust survivors, into Nazis. In London, Mosley and his followers were met by twenty thousand antifascist demonstrators, who clashed with the six thousand police trying to protect a couple thousand fascists in the now famous Battle of Cable Street. Things went differently in Skokie. The local authorities tried to prevent the march, but the American Civil Liberties Union (ACLU) sued to allow it, causing many of its members to resign. Despite the ACLU’s legal victory, the neo-Nazis decided to stage a rally in downtown Chicago instead. In some ways, this mirrors Mosley’s East London march. But it differs importantly: Nazism was rising in the 1930s, but, by 1978, American neo-Nazism had become a small, fringe group. Regardless of their relative power, both forces belonged to an organized political current with a history of physical violence and a strategy of seizing political power. The ACLU’s defense included two arguments relevant to the present discussion. On the one hand, they pointed to the dangers posed by allowing the state, local, or federal government to limit or regulate speech, fearing it would set a precedent that could be turned against other social movements’ democratic rights, including organized labor, minority groups, and the Left. Indeed, the danger of empowering the state to limit free speech rights is precisely why socialists cannot rely on the state when confronting violent intimidators. Secondly, the ACLU claimed that because the march did not pose an intended, likely, and imminent danger of violence, it counts as constitutionally protected speech. This clarifies an important distinction between the antiracist left and the more broadly liberal ACLU. For groups like the ACLU, violent intimidators should enjoy the same free speech rights as racist persuaders like Jensen, Hernstein, and Murray until the speech becomes dangerous. For the antiracist left, violent intimidators are categorically different from racist persuaders. The relationship between groups like neo-Nazis or the KKK and democratic social movements is one of open belligerence rather than ideological struggle. Violent intimidators are not trying to persuade, but to intimidate. Their language is the language of violence. As far as the social movements are concerned, the otherwise reasonable rule that speech is protected until violence appears imminent should not apply to these violent intimidators: instead, that principle allows them the choice to select the time, place, and manner most favorable for their violent actions.

### AT: Spillover/Snowball

#### Regulations are crucial to the functioning of free speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

Like many European liberals, Garton Ash often conflates freedom with the free market, seeing any state intervention as an attack on individual rights. This extends to his notable opposition to regulation, which he seems to associate with censorship. However, regulation is not only compatible with the protection of civil and political rights, it is essential to it. For one, regulation may actually promote free speech by allowing greater access to the media. Garton Ash recognizes the unequal access to the mass media, even citing A. J. Liebling’s famous dictum that “freedom of the press is guaranteed only to those who own one.” At the same time, Garton Ash rejects even modest measures to improve media access. For example, he is aware of but does not promote the Fairness Doctrine, obligating radio stations to provide airtime for opposing views on controversial issues, which was repealed in 1987. When the Federal Communications Commission adopted this principle in 1949, they did so based on the now-radical notion that the airwaves belong to the listeners, not the stations. Beyond the restoration of such modest measures, we have to look forward to the socialization (not statification) of the big media, putting it into the hands of popular, non-state organizations, in proportion to their size and importance in society. While that is not a demand that is actionable in the near future, it should be an important part of a radical critique of existing society and of a vision for a socialist and democratic future. Garton also explicitly criticizes the laws in many German states that establish the right of any individual, association, company, or public body to demand that a publication print a correction, free of charge, in a later issue. The correction must appear in the same section and in the same type size as the original statement. If need be, a judicial order in a civil court can enforce this rule. Garton Ash objects to these laws because he finds them ineffective in the era of social media. In this, the author once again fails to see rights as good in themselves, falling back into Mills’s consequentialism, and also underestimates the great power still exercised by newspapers like the New York Post and its global equivalents. Consistent with his anti-regulatory stance, Garton Ash argues that European laws granting the right to be forgotten are “indefensible in a society that believes in freedom of expression.” These laws, which allow individuals to have, after a number of years, items removed from the Internet that damage their reputation, do not violate free speech in any significant way. Indeed, in an era when asking job applicants about their criminal records is increasingly challenged, these right-to-be-forgotten laws express an egalitarian sensibility with important racial and class implications.

### A2 other alternatives solve

All of Strossen’s alternatives are also subjected to abuse by administrators.

Rumney, Philip NS [Reader in Law, Division of Law, Sheffield Hallam University]. "The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists." Comm. L. World Rev. 32 (2003): 117.

It is worth briefly considering whether some of the proposed¶ means of dealing with racist speech favored by commentators such as Strossen might also lead to abuse. Strossen argues that 'the types¶ of private expressive conduct that could be invoked in response to¶ racist speech include censure and boycotts'.2 46 There is no doubt that¶ censure and boycotts have a role to play in challenging racism and,¶ indeed, have been effectively utilized by the civil rights movement in¶ the United States.2 47 However, there is increasing evidence that 'private¶ expressive conduct' has also been abused by silencing and punishing¶ legitimate expression. For example, there is increasing¶ evidence that 'private expressive conduct' in American universities is¶ sometimes abused by students or faculty members who bring false or¶ exaggerated charges of bigotry or discrimination against faculty¶ members and other students.24 8 There is also evidence of attempts to¶ suppress particular views on such issues as the Israeli-Palestinian¶ conflict and German history by the use of allegations of anti-Semitism¶ and public condemnation. 24¶ 1 Whilst such behaviour may be consistent¶ with First Amendment values, it may still operate to discourage the¶ expression of certain views for fear of attracting criticism.250¶ This is not to suggest in any way that controversial issues or claims¶ should not be the subject of critical comment, or that anti-Semitism,¶ discrimination or bigotry should not be challenged. Rather, the point¶ is simply that measures that are consistent with First Amendment¶ values as postulated by Strossen are not only open to abuse, they are¶ by their very nature unregulated, compared, for example, with the¶ incitement provision which might have the effect of preventing abuse;¶ a point not addressed by Strossen or the other opponents of hate¶ speech regulation.2 5 '

#### Trying to increase the speech rights of minority students without speech codes results in resentment and a forced tradeoff between student groups. Ma 95

Alice K. Ma [Harvard and Radcliffe Colleges; J.D. candidate 1995] “Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights” 83 Calif. L. Rev. 693 March 1995

It is difficult to imagine, however, what form such a preference would take. Its efficacy is similarly doubtful. The state might provide, for example, extra funding to minority student organizations. However, in some ways the state already does so, without the result of curbing hate speech. To the extent that there are minority student groups on many college campuses but no such groups for white students, 194 and to the extent that these minority groups receive public funding, they are given a preference that often results in increased expressive activity. Unfortunately, despite the existence of such groups, hate speech continues to be a problem on campuses throughout the country. Most, if not all, of the incidents described in the Introduction to this Comment occurred at campuses that supported minority student organizations at the time of the incident, to no avail.¶ In fact, it may be that the increased presence of students of color at these schools, and their increased expressive activity, contribute to the escalating racial tensions of which hate speech is a manifestation. As has often been the case for minorities, raising one's voice sometimes attracts unwanted attention in the form of resentment. As a result, minorities are caught in a catch-22.¶ The appeal of a program that would enhance the speech opportunities of students of color is chimerical on another level. Speech rights, like other resources, are often limited. 195 The government may not be able to increase [\*727] the speech activities of one group without decreasing those of another. In the case of public funding, support for organizations such as the African American Students Association or the Chicano Students Association necessitates correspondingly lower levels of support for other student groups, including the White Students Association if one exists. Thus, discouraging hate speech by augmenting the speech rights of minorities would incur costs just as hate speech codes do but with little assurance of success.¶ Similarly, increased statements from campus administrators or professors would likely have only slight influence. Such statements might take the form of diversity workshops or multiculturalism programs - the same sort of activities that have been conducted in recent years on campuses across the country 196 without coming close to eliminating racist speech.¶ Racial insults draw their venom from centuries of slavery and racial hostility. If and when race relations improve so that students no longer need special protection, then hate speech regulations will no longer be justified. Narrowly tailored regulations would provide for this eventuality. Until then, however, we should not rely only on education, increased funding, and moral suasion.

### A2 Rights/means based/constitution

#### Recognizing discriminatory speech outweighs – the fourteenth amendment comes first and secures the first. Ma 95

Alice K. Ma [Harvard and Radcliffe Colleges; J.D. candidate 1995] “Campus Hate Speech Codes: Affirmative Action in the Allocation of Speech Rights” 83 Calif. L. Rev. 693 March 1995

The traditional argument against this type of governmental intervention asks for our faith in dialogue, communication, speech, and debate. If we prevent all obstructions to freedom of expression, the argument goes, then right and truth will eventually prevail. Opponents of hate speech codes gamble that racist speech will eventually disappear so long as we safeguard our speech rights. In this game, however, only minorities have been asked to ante up. If, as experience teaches, free speech is insufficient to stop hate speech, then minorities will continue to lose.¶ In response to Charles Lawrence's criticism of the scarce protection that the First Amendment has so far provided to people of color, 208 Nadine Strossen argues that the First Amendment is more robust than it used to be. She explains, "In short, although slavery coexisted with the theoretical guarantees enunciated in the First Amendment, slavery did not coexist with the judicially enforceable version of those guarantees that emerged only after World War I." 209 Perhaps, as Strossen claims, slavery would have been abolished more quickly had the First Amendment then had teeth, but the fact that freedom of speech has such recent origins is itself telling.¶ Defenders of the First Amendment assert its priority over other Constitutional provisions, citing its preeminent place in the Bill of Rights. However, if freedom of speech as we know it did not develop until well into the twentieth century, then the Fourteenth Amendment, passed in 1868 after the end of the Civil War, is in fact much older. Although chronology is not [\*731] dispositive of the question of priority, neither can First Amendment absolutists claim the authority of long settled doctrine.¶ Along with the Thirteenth Amendment, which abolished slavery, the Fourteenth was passed specifically to protect African Americans. It included in its provisions not only the Equal Protection Clause but the Due Process Clause, through which the First Amendment is applied to the states. This implies a special solicitude for the speech rights of the newly freed slaves. If so, equality provided much of the impetus for the subsequent expansion in First Amendment doctrine. 210¶ In his discussion of the First and Fourteenth Amendments, Charles Lawrence relates a story told to him by John Powell, an African American who was then the National Legal Director of the ACLU. The story takes place over a Thanksgiving dinner. Powell's family is vegetarian, and Powell's children asked which of the two dressings on the table was the vegetarian dressing. One of the hosts, pointing, said, "This is the regular dressing, and the other is the vegetarian dressing." 211 To many Americans, the First Amendment is the "regular" amendment, and the Fourteenth Amendment is the "vegetarian" amendment - "a special amendment for a minority of different people." 212¶ In truth, equality concerns us all. Unless we respect difference, we are all unequal, and we are all vulnerable to discrimination and prejudice. Although the Fourteenth Amendment was drafted on behalf of the newly freed slaves, its language encompasses all Americans. Its protections, like those of the First Amendment, extend to everyone. We cannot embrace one amendment to the exclusion of the other, however. Neither is meaningful so divorced. The First Amendment's guarantee of free speech must be read in tandem with the Fourteenth Amendment's guarantee of equality. Far from being irreconcilable with freedom of speech, the Fourteenth Amendment's Equal Protection Clause provides a justification for hate [\*732] speech regulations that preserves First Amendment values and extends speech rights to all.